

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND
TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

BILL 259

An Act to amend the Railway Act

THURSDAY, MAY 5, 1955

TUESDAY, MAY 10, 1955

WITNESSES:

Mr. R. Kerr, General Counsel, Board of Transport Commissioners, Mr. K. D. Spence, Commission Counsel, Canadian Pacific Railway Company; Mr. J. W. G. Macdougall, Commission Counsel, Canadian National Railway Company; Mr. Norman Munnoch, General Counsel, Bell Telephone Company.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955.

STANDING COMMITTEE
ON
RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.,

and

Messrs.

Barnett	Goode	Lavigne
Batten	Gourd (<i>Chapleau</i>)	Leboe
Bonnier	Green	McIvor
Boucher (<i>Chateauguay- Huntingdon-Laprairie</i>)	Habel	Meunier
Buchanan	Hahn	Montgomery
Byrne	Hamilton (<i>Notre-Dame- de-Grace</i>)	Murphy (<i>Lambton West</i>)
Campbell	Hamilton (<i>York West</i>)	Murphy (<i>Westmorland</i>)
Carrick	Harrison	Nesbitt
Carter	Healy	Nicholson
Cauchon	Herridge	Nickle
Cavers	Hodgson	Nixon
Clark	Holowach	Nowlan
Decore	Hosking	Purdy
Deschatelets	Howe (<i>Wellington- Huron</i>)	Ross
Dupuis	James	Small
Ellis	Johnston (<i>Bow River</i>)	Stanton
Follwell	Kickham	Viau
Gagnon	Lafontaine	Villeneuve
Gauthier (<i>Lac-Saint- Jean</i>)	Langlois (<i>Gaspe</i>)	Vincent
		Weselak

E. W. Innes,
Clerk of the Committee.

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ORDERS OF REFERENCE

MONDAY, April 18, 1955.

Ordered,—That the following Bill be referred to the said Committee:
Bill No. 259, An Act to amend the Railway Act.

MONDAY, May 2, 1955.

Ordered,—That the name of Mr. Nesbitt be substituted for that of Mr. Fulton on the said Committee.

Attest.

Leon J. Raymond,
Clerk of the House.

REPORT TO THE HOUSE

TUESDAY, May 10, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

EIGHTH REPORT

Your Committee has considered Bill No. 259, An Act to amend the Railway Act, and has agreed to report it without amendment.

A copy of the evidence adduced in respect of the said bill is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

NOTE: *The Seventh Report dealt with a Private Bill in respect of which verbatim evidence was not recorded.*

MINUTES OF PROCEEDINGS

THURSDAY, May 5, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Bonnier, Boucher (*Chateauguay-Huntingdon-Laprairie*), Buchanan, Byrne, Carrick, Carter, Cauchon, Cavers, Decore, Deschatelets, Ellis, Follwell, Gauthier (*Lake St. John*), Gourd (*Chapleau*), Green, Hahn, Hamilton (*York West*), Harrison, Hodgson, Hosking, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Lafontaine, Langlois (*Gaspé*), Lavigne, McCulloch (*Pictou*), Murphy (*Lambton West*), Murphy (*Westmorland*), Nicholson, Nesbitt, Purdy, Small, Stanton, Villeneuve and Weselak.

In attendance: Honourable George C. Marler, Minister of Transport; Mr. F. T. Collins, Administrative Officer, Department of Transport.

From the Board of Transport Commissioners: Mr. R. Kerr, General Counsel; Mr. Kells Hall, Director and Mr. J. E. Dumontier, Assistant Director, both of the Engineering Branch.

From the Canadian Pacific Railway Company: Mr. K. D. Spence, Commission Counsel, Mr. G. E. Shaw, Engineer of Bridges, and Mr. R. C. Steele, Engineer of Signals.

From the Canadian National Railways Company: Mr. J. W. G. Macdougall, Commission Counsel.

From the Bell Telephone Company: Mr. Norman Munnoch, General Counsel, and Mr. R. Merriam, Counsel.

The Committee proceeded to the consideration of Bill No. 259, An Act to amend the Railway Act.

On motion of Mr. Byrne,

Resolved,—That the Committee print 750 copies in English and 300 copies in French of its Minutes and Proceedings and Evidence in respect of Bill No. 259, An Act to amend the Railway Act.

Clause 1 of the Bill was called and the Minister of Transport made a brief statement.

Mr. Kerr was called, outlined the purpose of the Bill, was questioned thereon and retired.

Mr. Spence outlined the stand of the Canadian Pacific Railway with respect to the proposed changes to the Railway Act. He submitted tables showing:

(1) Estimated cost of Maintenance and Operation of Highway Crossing Protection Devices for 1954 on C.P.R. lines;

(2) Statement of C.P.R. Expenditures for Grade Separation Projects for Five-Year Period, 1950 to 1954 inclusive.

At 1.00 o'clock p.m., the Committee adjourned until 3.30 o'clock p.m. this day.

STANDING COMMITTEE

AFTERNOON SITTING

The Committee resumed at 3.30 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Barnett, Batten, Bonnier, Byrne, Campbell, Carrick, Carter, Cavers, Deschatelets, Ellis, Follwell, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Hahn, Hamilton (*York West*), Harrison, Hodgson, Hosking, James, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Nicholson, Nixon, Purdy, Small, Stanton, Villeneuve, and Weselak.

In attendance: Same as at morning sitting.

Mr. Spence was questioned regarding his statement made at the morning sitting, and retired.

Mr. Macdougall explained the position of the Canadian National Railway Company respecting the bill under study; he proposed certain amendments to the Railway Act and, having been questioned thereon, he was retired.

Mr. Munnoch made a statement on behalf of the Bell Telephone Company; he presented a proposed amendment to the Act, and was questioned thereon.

At 6.00 o'clock p.m., the Committee adjourned until 8.00 o'clock p.m. this day.

EVENING SITTING

The Committee resumed at 8.00 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Barnett, Batten, Bonnier, Campbell, Carrick, Carter, Cavers, Deschatelets, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Hamilton (*York West*), Herridge, Hosking, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), McIvor, Montgomery, Nicholson, Nixon, Purdy, Ross, Small, Villeneuve, and Weselak.

In attendance: Same as at morning sitting.

Mr. Munnoch completed his presentation; he was questioned and retired.

Mr. Spence was recalled; he spoke briefly and was retired.

Mr. Munnoch made a further brief statement and was retired.

At 9.10 o'clock p.m., the Committee adjourned to the call of the Chair.

TUESDAY, May 10, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Batten, Bonnier, Byrne, Campbell, Carrick, Deschatelets, Gauthier (*Lac-Saint-Jean*), Goode, Gourd (*Chapleau*), Green, Hahn, Harrison, Herridge, Howe (*Wellington-Huron*), Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), McIvor, Nicholson, Small, Stanton, Viau, Villeneuve, and Weselak.

In attendance: Honourable George C. Marler, Minister of Transport.

From the Board of Transport Commissioners: Mr. R. Kerr, General Counsel; Mr. Kells Hall, Director and Mr. J. E. Dumontier, Assistant Director, both of the Engineering Branch.

From the Bell Telephone Company: Mr. R. Merriam, Counsel.

The Committee resumed consideration of Bill No. 259, An Act to amend the Railway Act.

Clauses 1 to 3 inclusive were adopted.

The following suggested amendment to the Act was considered:

Section 416 of the said Act is amended by adding thereto the following subsection:

“(2) Any person who, in using any highway crossing at rail level for the purpose of passing on foot or in any vehicle along such highway across the railway, disregards signs, signals, or other protective devices erected or otherwise provided by the Company pursuant to Order of the Board, is liable, on summary conviction, to a penalty not exceeding twenty-five dollars.”

Agreed: That a communication be sent to each of the Provincial Ministers of Highways, asking him to consider whether existing provincial legislation deters highway vehicles from crossing railways without proper regard for signs, signals and safety devices.


Several other suggestions were also considered.

The Preamble, the Title and the Bill were adopted.

The Chairman was ordered to report the Bill, without amendment, to the House.

At 11.35 o'clock a.m., the Committee adjourned until 10.00 o'clock a.m., Thursday, May 12.

E. W. Innes,
Clerk of the Committee.



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EVIDENCE

MAY 5, 1955

10.40 a.m.

The CHAIRMAN: Order, gentlemen. We have a quorum. Bill No. 259, an Act to amend the Railway Act. It is customary to have a certain amount of the evidence printed.

Mr. BYRNE: I move that the committee print 750 copies in english and 200 copies in french of its minutes of proceedings and evidence in respect of Bill No. 259, an Act to amend the Railway Act.

The CHAIRMAN: All those in favour? Against?

Carried.

The CHAIRMAN: Shall clause 1 be carried?

Mr. GREENE: Are there any people here who wish to make representations on this bill?

The CHAIRMAN: I think we shall call on Mr. Kerr of the Board of Transport Commission. Has the Hon. Minister anything to say?

Hon. Mr. MARLER: So far as this piece of legislation is concerned, I thought it would be helpful to the committee if we had two or three experts to answer any questions which members of the committee might wish to ask concerning the legislation itself and concerning the administration of the grade crossing fund in the past, and I therefore have Mr. Kerr who is counsel for the Board of Transport Commissioners; Mr. Hall who is an engineer and a member of the staff of the board and who has had personal and particular familiarity with the operation of the grade crossing fund, and also Mr. George Scott of the Department of Transport who has a good deal to do with the drafting and preparation of the report of the board with which I think members of the committee are already familiar. I am quite sure that if there are any questions which members of the committee would like to ask, Mr. Kerr and Mr. Hall would be glad to answer them, and that if Mr. Scott is required to supplement those answers he will be very glad to do so.

Mr. GOODE: Before any evidence is taken, Mr. Chairman, may I say that I have to leave for the broadcasting committee at five minutes to eleven, and if I do leave the room it is not for disrespect to yourself or to the Hon. Minister but for that reason.

Mr. GREENE: Can we have an explanation of the bill from the Board of Transport Commission?

The CHAIRMAN: I will ask Mr. Kerr to come forward.

Mr. KERR: Mr. Chairman, this bill is to implement certain recommendations made by the Board of Transport Commissioners. As the Hon. Minister has already said, the board was instructed to conduct an enquiry into the railway highway crossing problem in Canada by order in council No. PC 1953/52 dated January 14, 1953, and the board held public hearings all across Canada and heard briefs and evidence from many interested parties including the provincial governments and major cities.

The result was that the board made its report and made certain recommendations which are found at page 72 of its report and this bill is designed to implement those recommendations with the exception of one. Do you wish me to deal with the individual sections?

The first section of the bill makes a slight change in section 262 of the Railway Act. That section had in it the words "subject to the provisions of section 263". Now by section 2 of the bill section 263 is being repealed so consequently those words "subject to the provisions of section 263" are no longer appropriate.

Section two of the bill repeals section 263. That section 263 is the section which provides that:

"In any case where a railway is constructed after the 19th day of May, 1909, the company shall, at its own cost and expense, unless and except as otherwise provided by agreement approved by the Board... provide, subject to the order of the Board, all protection, safety and convenience for the public in respect of any crossing of highway by the railway".

There is no similar provision in respect of railways constructed prior to 1909 or highways constructed across a railway prior or subsequent to 1909, and the repeal of section 263 will remove these distinctions and give the board power to apportion the cost of protection at its discretion.

Section three of the bill deals with what is generally called the grade crossing section of the Railway Act—section 265. The principal change in subsection one is to remove the distinctions in the old subsection between crossings constructed before April 1909 and afterwards and to permit the fund to be also applied for reconstruction and improvement of presently existing subways and other grade separations which are inadequate because of their location, design or size, for highway traffic. As you all know a great many old subways and bridges exist which were built in the 1880's, or many years ago, and many of these are inadequate at the present time. Formerly no grant could be made from the grade crossing fund to the improvement or reconstruction of such structures because the section was limited to the improvements and protection of level crossings. This amendment will allow monies to be applied for the reconstruction of these structures. Subsection two increases the amount that can be applied out of the fund. At the present time the amount is limited in respect of a level crossing to 40 per cent of the actual cost of the protection, with a maximum of \$150,000.

The new subsection will increase the percentage from 40 to 60 per cent and will increase the maximum from \$150,000 to \$300,000. And clause B will enable the board to apply a maximum of 30 per cent of the cost of reconstruction of subways, which I referred to, or bridges, with a maximum of \$150,000.

Subsection 4 is merely a section which will enable the money in the fund to be used in accordance with the new provisions. Formerly there were certain provisions attached to the granting of the money which was put in the fund. For instance, it was limited to level crossings. But now, since the purposes of the fund are being broadened out, it is necessary to remove those former restrictions and to allow the money in the fund to be used for whatever work is in accordance with the new provisions.

Subsection 5 provides for an increase in the annual appropriation by parliament. The present appropriation is \$1 million, and the board's recommendation which is implemented here, is to increase this amount to \$5 million until parliament provides otherwise.

It maybe that with experience some different amount will be considered more appropriate than \$5 million. But meanwhile the annual appropriation, if this subsection is passed, will be \$5 million.

There is also a provision that if the uncommitted amount in the fund at the beginning of any fiscal year is more than \$2 million, the amount of the appropriation of that year shall be such amount as, with that balance, will bring the fund up to \$7 million.

It is possible that some year the whole amount of \$5 million may not be used, and if so, it may not be necessary to have another \$5 million the following year.

Mr. SMALL: Is there any reason why that money cannot be left in the fund, and not put a limit on it?

Mr. KERR: The fund is accumulative from year to year; there may be more there in a particular year than is necessary for the foreseeable future for a year or so.

Subsection 6 is a new section which limits the amount that may be applied from the fund, to work on crossings which have been in existence for three years. The reason for that subsection is that the present Act, all down the years, has limited the money from the fund to the protection of existing level crossings, and the Board has consistently refused to authorize a new level crossing and immediately the crossing is completed make a grant from the fund, for the board has always felt that to do so would not be in accordance with the spirit of the legislation, because the legislation dealt with existing level crossings, and the board felt that a brand-new crossing was not within the spirit of that legislation. The board's practice is that when a party establishes a new crossing, be it a railway company, a municipality or a province, the cost of the new crossing is put on the party which establishes it and the board has felt—and this subsection carries into effect its feeling in that respect—that when a party establishes a new crossing it should bear the cost of any protection that is necessary at the time the crossing is built and for a reasonable period thereafter and that three years is a reasonable period. At the end of three years the board can apportion the cost of protection as it deems fit, and of course within that three years the board can also order protection, but if protection is ordered within that three years the board feels the cost should be on the party that establishes the crossing.

Subsection 7 is also a new section, and perhaps it is only a clarification of what the board can do anyway. There will be a great many works in progress at the time this bill becomes law. Some of them will have been authorized and not started, others will be partially completed, and others will be fully completed, but the amount of the grant from the fund will not have been paid, and this provision is to give the board express authority to deal with such cases. If the amount has been fully paid in respect to past crossings where the protection was installed two years ago or ten years ago, the intention is that these past transactions will not be re-opened to take advantage of the increased percentages in the fund, but that when works are in progress or the grant from the fund is not completely paid the board can take a look at it and increase the 40 per cent to 60 per cent, or make such grant as it feels is proper within the provisions of the section.

Subsection 8 is also a new subsection, and there was a very great demand for something in the nature of this subsection. At the present time the law is that if a new crossing is constructed across a railway, no grant can be made from the fund unless it closes an existing level crossing, and the board has found in quite a few cases that new highways either shortening present highways, or completely new highways joining up with other highways, take nearly all the traffic from one or two level crossings, and the board has felt and certainly the municipalities and provincial authorities agree, that where that situation exists and nearly all the traffic is taken from an existing highway crossing, or two or three highway crossings, the board should be enabled to make a grant towards the new grade separation. It has sometimes happened that the old crossings must be left open for the convenience of a few people who live in the neighbourhood for otherwise the people who live there could perhaps not get across the railway track. The board has felt and has recommended that the leaving of the crossings open for these

few people should not prevent a grant being made towards the new grade separation which will in effect divert practically all the traffic from the old crossing.

Subsection 9 has only a very slight change in that it adds the words "authorized". Sometimes the board's order is in the form of an authorization rather than a direct mandatory order and this amendment is merely to cover a case where the board authorizes a municipal corporation, for instance, to establish a new crossing. It does not order the city or town to establish the crossing but authorizes it and in such cases this section covers that type of order.

The CHAIRMAN: Thank you, Mr. Kerr.

Mr. SMALL: In respect to that the section I was asking about relates to the limitation of \$7 million a year. That is a tendency to question the fund limit. Why can it not be left opened and accumulative?

Mr. KERR: The moneys put in the fund, this year, for instance, if they are not spent will stay there and will build up.

Mr. SMALL: You are putting a limitation of \$7 million on it. The fund has not been expended in any one year. You are allowed to increase it to \$7 million. Why not leave it open to accumulate and some year you can spend more than \$7 million if necessary.

Hon. Mr. MARLER: It seems elementary that if you have more than \$3 million in the fund after all operations of one year it would follow that the expenditures out of the fund would be probably something less than \$3 million otherwise there would not be any surplus. What Mr. Small is suggesting is that although the board could not spend more than \$3 million in one year it should expect to spend more than \$7 million in the next year and it seems that that is an illogical approach to the problem. Where you say to the board "here is \$5 million" and the board is unable to spend more than \$3 million, I think it is rather difficult to justify taking out of taxes an additional amount in excess of \$7 million when the board has not been able to spend all that was given in the previous year. It may be a matter of opinion, but it seems to me that if the Board can spend up to \$7 million in one year that is an added provision and I would be personally unwilling to provide for a larger expenditure until we had an opportunity of reviewing the situation over a period of time.

Mr. NESBITT: Mr. Chairman, could any members of the board tell us exactly how proceedings are initiated to get help from this fund. There seems to be some difference of opinion. Are they always initiated by the municipalities or sometimes by the railways or sometimes by the board themselves?

Mr. KERR: They are initiated in those three ways. Usually they are initiated by the highway authority, for instance, the town and it is not very frequently that the railway initiates them, but they do sometimes where they are rearranging tracks. Sometimes they are initiated as a result of the board's inspection of a crossing. There may have been an accident there involving personal injury. All these accidents are investigated by the board and the board itself may feel some protection is necessary there. In that case the board usually calls a conference of the interested parties, the railway concerned and the highway authority, and draws to their attention that the board feels that some protection is necessary there. But even in those latter cases if the municipality is not prepared to go ahead and expend some money in the protection the board would look very carefully at it before it would order protection over the protests of the municipality. They are initiated in those three ways but normally, and in the great majority of the cases, they are initiated by the highway authorities.

Mr. NESBITT: The provincial highway would be the provincial government?

Mr. KERR: Yes.

Mr. NESBITT: You say that the board itself sometimes might initiate proceedings as a result of their own investigations. Do you have inspectors who go around?

Mr. KERR: Yes, there is a staff of inspectors travelling the railways and inspecting crossing all the time.

Mr. NESBITT: Do you have any other sources of acquiring information as to accidents?

Mr. KERR: The railway makes reports to the board of accidents and if it is a fatal accident the board usually receives a report of the coroner's inquest. The character of the crossing is constantly under study.

Mr. NESBITT: How would that report of the coroner's inquest get to the board?

Mr. KERR: Sometimes it is sent in by the municipalities, sometimes by boards of trade or highway safety organizations.

Mr. NESBITT: Did you say that in all cases you get the reports of these inquests?

Mr. KERR: No, but we get them quite frequently.

Mr. NESBITT: In the event that the board decided there are a certain number of accidents occurring at certain crossings—this is just a rule of thumb—as a matter of actual practice how many accidents and within what period of time would the board consider necessary they take place before action would be authorized or in some cases ordered?

Mr. KERR: I do not believe there is any such rule of thumb. Many accidents are not caused by the dangerous condition of the crossing; sometimes it is carelessness on the part of the motorist, excessive speed on his part or perhaps drunken driving. The fact that there are quite a few accidents does not of itself necessitate protection. The board just looks at each case on its merits.

Hon. Mr. MARLER: Mr. Kerr, would you explain to the committee just what accidents are required by law to be reported to the board.

Mr. KERR: Section 288 of the Railway Act is headed "Accidents" and there is a subheading "Notice to be sent to Board" and there are three subsections. Subsection 1 says:

Every company shall, as soon as possible and immediately after the head officers of the company have received information of the occurrence upon the railway belonging to such company, of any accident, attended with personal injury to any person using the railway, or to any employee of the company, or whereby any bridge, culvert, viaduct, or tunnel on or of the railway has been broken or so damaged as to be impassable or unfit for immediate use, give notice thereof, with full particulars, to the Board.

Subsection 2 then continues:

The conductor or other employee in charge of the train, place or structure in connection with which such accident occurred, shall as soon as possible after such accident notify the board of the same by telegraph.

Then subsection 3:

The Board may by regulation declare the manner and form in which such information and notice shall be given and the class of accidents to which this section shall apply, and may declare any such information so given to be privileged.

Now the board has made an order requiring the railway to report any such accidents attended with personal injury.

Mr. JOHNSTON (*Bow River*): Is it not just for employees or those just riding on a train. What about others who have an accident say travelling on the highway who go across the grade and then are hit?

Mr. KERR: The order of the board really covers all collision accidents between motor vehicles and trains at a crossing attended with personal injury.

Mr. JOHNSTON (*Bow River*): But I understood the section to read that it was just those who were riding on a train or those employed by the company.

Mr. KERR: It says: "Personal injury to any person using the railway". Now, the board has made an order which requires the railways to report any accident attended with personal injury.

Mr. CARTER: I would like to ask, Mr. Chairman, who makes the final decisions as to what type of crossings should be built. Does that rest with the Board of Transport Commissioners or railway or who controls the type; I mean there are different types of crossings.

Mr. KERR: Yes sir. It is the board which determines the type of crossing and the type of protection.

Mr. CARTER: Would it be in order to ask a question about a specific crossing. I am interested in the one being built at Port-aux-Basques across the new terminals.

Mr. KERR: I am not familiar with it.

Mr. SMALL: Following up your statement in respect to your inspectors' report on the level crossings, have you a map or anything compiled. I know you must have because you list 129,316 crossings that are unprotected on the last report that you have. On that there are inspectors reports somewhere as to whether they are classified as dangerous. How many out of that number would there be in the estimation of the board or in the estimation of the inspectors which would be classified as what would be called grade separations?

Mr. J. E. DUMONTIER (*Director of Engineering, Engineering Branch, Board of Transport Commissioners for Canada*): We do not have the complete record of all the crossings in Canada. Of the crossings for which we have a record we think we could estimate about a third of them are in need of protection whether by elimination of the crossings or automatic protection. The number of grade separations I think at the present time is in the order of 5 per cent, that is about 1,500 crossings which are protected by grade separations; and protected by automatic protection or man operated gates. I think it is between 16 and 1,700, that is between 5 and 6 per cent.

Mr. FOLLWELL: Could I ask the witness what factors determine the type of protection we provide for grade crossings?

Mr. DUMONTIER: You mean between grade separation and automatic protection?

Mr. FOLLWELL: What I have in mind, Mr. Chairman, is that in my observation it would appear to me that sometimes you have gates at a crossing that do not have too much traffic, yet at a highway crossing you have only a bell or a light signal. I am wondering what factors determine the type of protection you put on any crossing?

Mr. DUMONTIER: In the cities where there is frequent movement over a crossing and in cities where there is frequent movement of trains over a crossing sometimes it is necessary to protect it by manual protection either by a watchman or a man operating a manually operated gate, but in other cases where we install automatic protection the difference we give between gates

and flashing light signals is whether it is a double track or a single track main line. We put in gates at double track main lines and flashing lights at single track main lines.

Mr. FOLLWELL: That is not always the case.

Mr. DUMONTIER: It has been in recent years the policy which is followed.

Mr. FOLLWELL: I am thinking of several crossings where there are two main line tracks by the C.N.R. and right close by is another main line of the C.P.R. railway and it is a heavily travelled highway and yet there are no gates.

Mr. DUMONTIER: That is right. There are about 350 of these crossings at double track main lines which are only protected by wigwag or light signals and which should be protected by gates. That is one of the problems we have (in mind to correct if we have sufficient funds to do it.

Mr. FOLLWELL: Then I think that the committee can understand you to say when this bill is passed and the money available you will immediately start on the job of putting in better protection?

Mr. DUMONTIER: That is the intention, sir.

Mr. HOSKING: Previously you said that the Board of Transport Commissioners could order the municipalities to supply protection. Is there any limit to what the cost is to a municipality. I understand that the municipality or a corporation if it wants the Board of Transport Commissioners to do a job that the limit is \$150,000 for the crossing, or $\frac{1}{3}$ or which ever is higher.

Mr. KERR: That is the limit of the grant from the fund for the protection ordered of gates or even a subway which would cost \$1 million. All the board can contribute under the Act is the maximum of \$150,000.

Mr. HOSKING: If they want the municipality to do this do they still just pay the \$150,000 or pay their third, or does the limit of \$150,000 then apply to the municipality?

Mr. KERR: If the total cost were \$1 million the board can only grant a maximum of \$150,000 and the balance the board can order to be paid by the interested parties, which may be divided equally between the railway and the municipality or the board can apportion the remainder after the grant from the fund among the interested parties as the board sees fit.

Mr. HOSKING: The board is separate from the railways. I was thinking that this grant was actually a grant from the railways, but the board is separate and they apportion the responsibilities between the railway and the municipality.

Mr. KERR: Yes. There is a provision in the Railway Act, section 39. I will read it:

When the board, in the exercise of any power vested in it, in and by any order directs or permits any structure, appliances, equipment, works, renewals or repairs to be provided, constructed, reconstructed, altered, installed, operated, used or maintained, it may, except as otherwise expressly provided, order by what company, municipality or person, interested or affected by such order, as the case may be, and when or within what time and upon what terms and conditions as to the payment of compensation or otherwise, and under what supervision, the same shall be provided, constructed, reconstructed, altered, installed, operated, used and maintained.

(2) The board may, except as otherwise expressly provided, order by whom, in what proportion, and when, the cost and expenses of providing, constructing, reconstructing, altering, installing and executing such structures, equipment, works, renewals, or repairs, or the supervision, if any, or of the continued operation, use or maintenance thereof, or of otherwise complying with such order, shall be paid.

So the board has the authority to apportion the cost after making a grant from the fund.

Mr. HOSKING: And if a municipality years ago had given up the right of having an overpass over the railway and the municipality had a road and the railway has run a track across that road and they have a grade crossing and years ago the municipality gave up the right of a grade crossing and the railway put in a tunnel and now the tunnel is too small or the culvert underneath is too small, has the municipality forfeited all rights to have the railway maintain an underpass there that is sufficiently large to handle the traffic? What is the position in a case of that kind?

Mr. KERR: The board can always order the reconstruction of underpass or tunnel if required by the present day traffic conditions and can order a wider pass.

Mr. HOSKING: If the municipality can present a reasonable case.

Mr. KERR: Yes.

Mr. HAMILTON (*York West*): In connection with the last line of questioning and the board's authority to order certain work to be done in a certain way, does that not in effect, or may it not, bypass the formula financing almost completely in a lot of our present day requirements? That is, the board is in a position say to limit the contribution from the fund. There is a maximum as to what it can give but it can order a municipality or a railway to share in a much larger proportion than the ordinary formula set out here.

Hon. Mr. MARLER: But there is no ordinary formula. There is a percentage of contribution and there is a limitation on the contribution from the fund, but the Act does not provide any formula which the board must follow in attributing the remaining costs.

Mr. HAMILTON (*York West*): I may have posed the wrong language for it, but the proportionate contribution which the board may make may go by the board if the project is so large that many thousands of dollars more shall be required from the municipality or the railway. Is that right?

Mr. KERR: If the municipality does not have the money to proceed with a subway it is quite possible it might be delayed until the municipality or the provincial authorities are prepared to bear their share of the cost.

Mr. HAMILTON (*York West*): The board does have the authority to order them to do it?

Mr. KERR: Yes.

Mr. HAMILTON (*York West*): It might happen that they would not have the money.

Mr. KERR: It might be, and I think the board has the authority.

Hon. Mr. MARLER: I have known occasions in that sense.

Mr. HAMILTON (*York West*): I think Mr. Johnston asked the other questions on the accidents. Certainly the interpretation used of reporting accidents is not in keeping with the legislation that we have here. Would it not be advisable that it be amended to provide for reporting of all accidents which cover personal injury or property damage of any kind no matter to whom if we are going to keep up to date with the number of accidents at the level crossings?

Mr. KERR: I would be inclined to think that the railway would report any accidents which the board wants them to report.

Mr. JOHNSTON (*Bow River*): But it is not done by law.

Hon. Mr. MARLER: It is covered by an order.

Mr. KERR: There is an order of the board now requiring the reporting of certain accidents.

Mr. JOHNSTON (*Bow River*): Only by regulation. I agree with Mr. Hamilton that it does seem that there would be no inconveniences added if that was required by law. As I understand the regulations they do that pretty well now and would it not be better to have in the law that all accidents be reported?

Hon. Mr. MARLER: The only thing is that there is no doubt whatever that regulations issued by the board are certainly followed by the railways and the mere fact that we impose the regulation in the statutes would not make it any more or any less binding on the railway. If I might say one further word, when I asked Mr. Kerr a moment ago what accidents were reportable to the board I thought it was desirable to emphasize that under the Railway Act and under the order of the board the only accidents which are now required to be reported are accidents which take place which involve personal injury or death to persons and also the movement of the train. If you have a collision between two automobiles at a level crossing that is not a reportable accident under the Act. I think it is important to bear that in mind because it would be very easy to think, because there were frequent automobile accidents at a given crossing and not caused by trains, that some remedy ought to be undertaken by the railways, where as it seems to me it is something that depends on the highway authorities and not on the railways themselves.

Mr. HAMILTON (*York West*): I know specifically of cases where there have been numerous accidents caused by a so called level crossing where automobiles have met right on it because it may be raised just enough to prevent the proper lookout for the driver. It seems to me it might be just as necessary there for a grade separation as in any other case, if there were personal injuries and death and a continuation of it.

Mr. JAMES: In a section of my riding there is what is called a hole in the wall east of Newcastle. There is a very low arch with hills approaching on both sides and it is very bad. A truck of any height has to hit the centre of that subway in order to get through. If there was an accident at that particular point under the explanation of Mr. Marler there would be no reporting of that accident to the board.

Hon. Mr. MARLER: I think the fundamental purpose of the Railway Grade Crossing Fund is to diminish accidents which are primarily caused by the railway and not by constrictions on the highway itself, surely are not looked upon as a responsibility of the railway grade crossing fund.

Mr. JOHNSTON (*Bow River*): In Mr. James' case, would you assume it was not the responsibility of the railway, but that the highway people should lower the highway in an effort to make a greater clearance?

Hon. Mr. MARLER: Surely that would be a highway problem.

Mr. JAMES: Would this bill supply the funds to remedy that particular problem?

Hon. Mr. MARLER: The bill is so broad that the board can virtually authorize or order any works that the highway interests, the railway, or the board believe would promote public safety.

Mr. JAMES: If a situation arose where the board felt that something was required—and there is no doubt that something is required—would the municipality have to share in the cost of anything of that kind? The township probably could not care less. It is not a particular advantage to the municipality. Can you give us any opinion on that?

Mr. KERR: Is it a provincial highway you are referring to?

Mr. JAMES: Yes; and you have probably gone through there yourself.

Mr. CAVERS: It is like getting through the eye of a needle.

Mr. KERR: I do not know. The board would have to look at the case. The board has a direction to make a grant or not to make a grant, or

decide who should bear the cost of any work. You are speaking of an approach to a crossing? Section 269 of the Railway Act provides as follows:

269. (1) The inclination of the ascent or descent, as the case may be, of any approach by which any highway is carried over or under any railway, or across it at rail level, shall not, unless the Board otherwise directs, be greater than one foot of rise or fall for every twenty feet of the horizontal length of such approach.

Mr. JOHNSTON (*Bow River*): Does the board itself have to look at the crossing and determine that there should be protection there, whereupon they can allocate the costs as they desire?

Mr. KERR: I think so, sir.

Mr. JOHNSTON (*Bow River*): I have one in mind at Drumheller, where the province says it is not their responsibility, and the municipality says it is not their responsibility; yet there have been several fatal accidents there. Could the board have a look at that problem and decide that some protection should be there, and decide whose responsibility it is? Does this Act give them that authority now?

Hon. Mr. MARLER: There is no doubt about that, yes.

Mr. CARRICK: Following along the line of questions asked by Mr. Hamilton in which he referred to accidents on the highway in which no train took part at all, would it be practical for the railway to get information about all accidents happening at crossings where no railway was involved?

Mr. KERR: I do not know. I can conceive of a situation where two automobiles collided at a crossing and there would not be a railway employee within a mile of that crossing at the time, and the accident might never come to the attention of the railway.

Mr. CARRICK: It would be an extremely difficult matter if you tried to enact a law requiring these matters to be brought to the attention of the board.

Mr. KERR: It would be difficult to get all accidents reported because some might not get reported, and of course the railway would not know anything about them.

Mr. CARRICK: If an accident of the kind we have been discussing is brought to the attention of the board, would the board investigate it and take whatever action might be necessary?

Mr. KERR: I think so. There is a provision in the Act, section 312 subsection 2, which provides that where an accident takes place at a crossing:

312 (2) No train shall pass at a speed greater than twenty-five miles an hour over any highway crossing at rail level if at such crossing subsequent to the 1st day of January, 1905, a person or vehicle using the crossing, or an animal being ridden or driven over the same, has been struck by a moving train, and bodily injury or death thereby caused to such person, or to any other person using the crossing, unless the Board directs that the speed limitation of twenty-five miles an hour shall not be in effect at the crossing or unless the crossing is protected to the satisfaction of the Board.

So that when these accidents are reported to the Board a speed limitation is put into effect by virtue of the statute, and it remains in effect until the board says, "O.K. Go at your normal speed again."

Mr. HAMILTON (*York West*): Returning to my question, if there is an accident involving so many dollars, the person injured is reported to the police of the municipality. Surely the board would have no difficulty in

obtaining information of that kind from those authorities, if an accident in fact took place at a railway crossing. It would not constitute a great barrier to get the information.

Mr. KERR: I think there is no question but that the board could request it and ask the municipal authorities to comply with the request. But they are not compelled to do it.

Mr. CAVERS: Under clause 2 the board is given the power to apportion the cost of the work, and to whom it may be apportioned. We have discussed today apportionment as between various railways or municipalities; but in addition under this subsection it says other corporations or persons. What other corporations or persons might be brought in to assume part of the cost of a railway crossing other than the municipality and the railways themselves?

Mr. KERR: Normally those are the parties. I cannot myself recall any case where other corporations were ordered to pay anything in respect to the cost. However a public utility may have wires or pipes as the case may be underneath the highway.

Mr. MURPHY (*Lambton West*): In the apportionment of the cost, let us take the case of a railway crossing which is on the outskirts of a city. Now then, in your apportionment, would you tell the committee if any other municipality than the city would be involved or could be assessed, so to speak?

Mr. KERR: There have been cases where crossings which were immediately on the boundaries of a city have been protected, and the board has ordered the city as a party interested to bear part of the cost; and those cases have resulted in considerable litigation; in some of them the board's findings that the city was an interested party against whom some of the costs should be levied have been upheld, while in other cases the courts, upon appeal from the board, have held that since the crossing was a certain distance beyond the city limits, the city could not be held within the meaning of the statute to be a party interested against whom the board could make an order.

Mr. MURPHY (*Lambton West*): In this case let us say that the crossing is in a city near the outskirts. Is there any power to assess any part or portion of that cost to the county?

Mr. KERR: Only if the board should find that, within the meaning of the Act, the county is an interested party.

Mr. MURPHY (*Lambton West*): How could you establish that? How do they become an interested party? Is it because of the traffic?

Mr. KERR: Yes; that is one of the factors. I do not know of any case where a county was brought in as an interested party to a crossing within a city; but I do know of one or two cases where a crossing was protected outside of a city, and the majority of the traffic using that crossing originated practically within the city. The crossing was very close to the city boundaries, and the board felt that in view of the circumstances, it was an interested party.

Mr. NESBITT: In view of the remarks made earlier, does the board receive reports from the provincial police, let us say in Ontario and Quebec, or from county police in other provinces regarding accidents at these grade crossings?

Mr. KERR: Not as a rule.

Mr. NESBITT: There is no request made. I gathered from what the minister said that probably there was very wide latitude given to what grade crossings can be assessed under the fund. Does the board consider that the only accidents which concern the board, for the purpose of deciding whether improvements ought to be made to a crossing, are accidents which actually involve a railway train, a sidecar, a handcar, or something of that nature?

Mr. KERR: No, I would not say so, sir.

Mr. NESBITT: In Mr. James' and Mr. Johnston's questions, would the board not consider that because the railway was there, because of the necessity of having a railway track, that it caused a constriction in the highway, and curves and so on, and that in such a case the fund should not assist in altering the crossing if there was any accident, even though it was between automobiles?

Mr. KERR: Well, the fund covers works for the protection, safety, and convenience of the public. Sometimes the accident factor may be small, and the factor of convenience may be much greater.

Mr. NESBITT: I have in mind a grade crossing in my constituency. It is a bad one, just as in Mr. James' case, where there have been at least 77 accidents since 1947. There was one fatal one. The figures were placed in *Hansard* recently; there were twenty-three persons injured and a jury recommendation was given that something should be done about it. A lot of those cases, as the minister mentioned earlier, did not involve a railway train itself, but the majority did. They were caused by the peculiar arrangement of the railway track itself and the highway. In cases such as that, where there have been such an enormous number of accidents, where a large percentage should be apportioned to the highway, no doubt because of the railway track itself being there, as was brought out by another member of the committee, would the board, in a case such as that, not consider that it should investigate the matter and recommend certain things to be done.

Hon. Mr. MARLER: Might I be permitted to say that Mr. Nesbitt raised this question in the House the other day. I was surprised that so many accidents seemed to have occurred at the railway crossing he mentioned without the board being aware of them.

At my instance the board investigated the matter and while they were not able to get the information prior to 1953 with regard to the accidents which had occurred at this crossing, they were however to get the information for 1953-1954, for which they had no report whatever. The figures which they have given me show that the number of accidents were somewhere in the neighbourhood of 30 or 40 which occurred and were reported to the police, at any rate, but which did not involve a train, with the exception of the one which occurred on April 23, 1953; and here again I think there is good reason for the fact that there was no report.

Perhaps the committee may be somewhat amused by the circumstances. Apparently the vehicle was travelling rather rapidly. The report says that the driver lost control of his vehicle as a result of a blow-out. The vehicle hit a guard rail and travelled eastward on the track a distance of approximately 60 feet, where the vehicle was abandoned by its occupants and was subsequently struck by a train.

In that particular case no personal injury was involved. The accident was not reportable and was not in fact reported. So here were two or three accidents out of the 40 accidents which occurred with respect to which no report was received by the board whatsoever. I think that explains why the question was answered as formerly put by Mr. Nesbitt sometime ago, and why the board had to say that they had received no report whatever. It seems to me that this question of the number of accidents at the crossing, whether they involved a train or not, is really a fairly simple one. I do not think there is any doubt whatever that the Railway Act gives the board the power to require such information as it thinks fit. I think it is statistically interested in the matter as to say to what extent train movement is responsible for those accidents.

Whereas, as we know, the provincial authorities, for the most part require information as to automobile accidents, whether they involve personal injury or not, because they are interested in the thing from a highway point of view,

so you have two different bodies, one of which is interested in the railways and in train movement especially, and the provincial authorities who ought to be very much interested in the highway aspect of the question. But I do not think there should be any confusion between the statistics and the need for correction at any particular crossing.

If a province says: "We have had many highway accidents at this crossing none of which involved a train", I think that they would apply to the board and ask for assistance from the crossing fund, and the board might have a report of the accidents and might order the improvements suggested by the province. Where, however, the accident originated because of train movements, I think the Board itself would be inclined to remedy the situation. So I do not think we should relate these to statistics and the attitude of the board with regard to an application for assistance for determination by the board, or an order for assistance in any particular case. There is a link between the two, but nevertheless they are really two different problems and are quite separate.

Mr. CAVERS: Would they have a right of action or not?

Hon. Mr. MARLER: I think that would be a matter for the civil law. We are not talking about actions against the railway. I do not think we are concerned with that.

Mr. NESBITT: I think the minister has taken a very reasonable approach to the matter and a very common sense one. I am inclined to agree with him, but I do take exception to one point. I think there are a great many accidents at one place regardless of whether they are due to highway conditions or to railway conditions; and I still think that a large number of accidents at one crossing indicate that something is wrong; and while the highway commission may be more responsible, nevertheless the railway is to an extent responsible because it is actually there, and probably it should be considered by the board. I think the minister said that the board might very well order that a certain percentage should be paid by the railway from the grade crossing fund for the alteration at any crossing.

Hon. Mr. MARLER: Yes. Does the hon. member remember that this particular crossing at which so many accidents have taken place is a protected crossing?

Mr. NESBITT: Yes, there are lights there.

Hon. Mr. MARLER: According to my information the crossing is at present automatically protected by two wigwags, two bells, and various highway signs which mark the approach to the crossing. So we would need to have someone hold the driver's hand when he comes to cross the railway.

Mr. NESBITT: I believe that every accident which took place at this crossing involved not local people, who have a great respect for it, but unfortunately strangers who were travelling along the main highway.

Hon. Mr. MARLER: That would make it a national problem.

Mr. BYRNE: I would like to ask the minister if the board can authorize payments for a crossing within a municipality which are purely pedestrian crossings?

Mr. KERR: It can authorize improvements at any crossing, any protection at any crossing.

Mr. BYRNE: Any protection, not necessarily on the highway?

Mr. KERR: Not necessarily.

Mr. CAVERS: Might I ask this question: suppose there is a level crossing for school children from an area to a school which might be on the other side of the railway tracks; is there any provision for providing a tunnel, or some way in which the children might go, rather than having to cross the railway tracks?

Mr. KERR: That would still come within the definition of a crossing, whether restricted to pedestrians or vehicles. The board sometimes has ordered pedestrian crossings which are not open to vehicles.

Mr. CAVERS: Even though there is no vehicle crossing there at all.

Mr. MURPHY (*Lambton West*): Let us take the case where it is deemed advisable and necessary that some work be done in respect to such a crossing in a city. Now then, can you bring in the county to bear part of the costs? What would be necessary for them to be a party to the distribution of the costs?

Mr. KERR: There would have to be proof to satisfy the board that the county is an interested party. It is very difficult for me to define it.

Mr. MURPHY (*Lambton West*): Let us say it is one of the main arteries coming into a city from a county. I wonder whether the county would not be properly assessed for part of the costs?

Mr. KERR: I would hesitate to say in a hypothetical case whether a county in that case would be an interested party or not in the view of the board. Furthermore, if the board decided that it was an interested party, there would still be recourse to the courts to see whether or not the board was correct.

Mr. MURPHY (*Lambton West*): Is the volume of traffic coming from the county into the city taken to be a factor?

Mr. KERR: I would not think so. The case that I know of was a case where the crossing was close to the boundary of the city; the city was interested in having it safeguarded, not from the point of view of the volume of traffic, but from the point of view of the traffic from the city, and the city's residents who were using this crossing regularly, which was on the boundary of the city. If you look at it from a point of view of where the traffic originated, or where the volume of traffic originated, you might get into a very wide field. The traffic might originate in another province, and a great deal of it come over that particular crossing.

Mr. HODGSON: Would it be a county or a provincial road in that case?

Mr. KERR: It might be a provincial road in some provinces.

Hon. Mr. MARLER: I take it that the board has complete discretion in distributing the cost of the improvement, and I take it that if they were satisfied that it was the responsibility of a county corporation, they would order the county corporation to contribute.

Mr. KERR: Provided its findings were in accordance with a proper interpretation of a "party interested".

Mr. HAMILTON (*York West*): In looking over the legislation, I see there is a deletion of section 263 by clause 2 of this bill, and the inclusion of sub clause 6 of section 265 under clause 3 of this bill. I was wondering if they were in fact consistent? Now in one case we have said—I assume when the bill was enacted—that if there is no protection, that is, of a 1909 railway, you look after it.

Hon. Mr. MARLER: By the municipality.

Mr. HAMILTON (*York West*): The section we are deleting. That is right. Without any contribution. We come to subsection 6, and now we say the first three years; in other words, when you delete it, it looks as if we are going to do something about it, but in subsection 6 we say, "Oh yes, but no for the first three years".

Hon. Mr. MARLER: The first three years as an alternative at a particular crossing.

Mr. HAMILTON (*York West*): That is what I mean. Under the new construction which is involved in the deletion of 263, if the board is going to do something about it; why delay for three years?

Mr. KERR: If the crossing was constructed by the railway, let us say, ten years ago, under the present law, the railway must bear the whole cost of protection. There are no similar provisions where the crossing was constructed by the province or the municipality; that is one factor in the board's thinking. The other is that where a new crossing is established, the party which establishes the crossing, whether it be a province, or a city, or a railway, under the board's normal practice, bears the cost of protection, if protection is necessary when the crossing is established.

Mr. HAMILTON (*York West*): Might I ask another question right there. This is what it leads into: how is it possible to determine these days that it was because of the action of any particular group, be it a municipality, a province or a railway. Have we not passed that stage?

Mr. KERR: The person who wants to establish a new crossing must go to the board to get authority to build that crossing. If a city wants to open a new crossing over a railway, the city must apply to the board seeking the permission of the board to create it, and if it looks to the board that it would be dangerous to open a level crossing without at the same time ordering protection, the board would so order it. We would say: "We will allow you to open the crossing provided it is adequately protected." In that case the board would be proceeding in the spirit of the legislation. It would be otherwise if the Board authorizes a crossing and then, one month later, having known that it was going to need protection, would say, "the crossing is actually in existence now, consequently we will make a grant from the fund for its protection.

The board considers that the party, be it the city, the province or the railway, establishing a new crossing should be prepared to bear the cost of such protection as is necessary for the first three years. At the end of that time conditions may have changed, and the board would look at the circumstances, and if protection is involved it might then determine that the party which established the crossing will not have to bear the whole cost of protecting it. But for the first three years, if crossing protection becomes necessary, the party who established the crossing should bear it.

Mr. HAMILTON (*York West*): I could go along with your argument if in fact the municipality wanted the new crossing, because if it could be limited there—because there are 50 houses here, and we are going to collect taxes from them—if that is so. But if the crossing is for the benefit of all the people—I mean, it might be for people from hundreds of miles around, how can we say in fact that the municipality are the people who create the crossing need?

Mr. KERR: You can say that the people who wish to create the crossing are the people who apply to the board.

Mr. HAMILTON (*York West*): It is more a case of who is put in the position of having to make the application?

Mr. KERR: It is not solely because the application is made by a particular party, but normally speaking, when the city asks for the crossing it is because the city itself needs the crossing, perhaps partly because of the traffic coming there from another city.

Mr. MURPHY (*Lambton West*): Where you have a crossing in a township, and it is over a county road, or where it is on a provincial highway, what assessment is made in that case?

Mr. KERR: The board has no power to make an effective order against the province to contribute to the cost of construction. It can make such an order against a county, if the county is the party which has control of the road;

it can also make it against a municipality; but it cannot make such an order against the Crown in the right of the province.

Mr. STANTON: Many of the main roads out of a town or city are known as suburban roads. Is it not a case of attributing the cost to the town, the city, or the county?

Mr. KERR: In some cases the province assists the municipality under provincial legislation; but if your question is whether the board can order a province as such to bear part of the cost of the protection, my answer is that the board does not have the power to make a compulsory order against the province to contribute money. It can order a contribution, but it cannot order a province to pay any part of the contribution. And it might be inequitable to put all the cost of the protection on the railway, if it is a provincial road, and if the province itself is unwilling to contribute.

Mr. STANTON: Suppose it is a suburban road.

Mr. KERR: If it is a suburban road, under the jurisdiction of the province, then the board can order the proper highway authority having jurisdiction over that road to bear its share of the cost, and of course the Board can make a grant from the fund for protection.

Mr. SMALL: I return to the appointment of costs, let us say, for grade separation, which are the ones which involve the greater expenditure. In urban sections, on the average, it is eight hundred thousand. Some go as high as two hundred thousand; while in the rural sections they run somewhere around \$100 thousand on the average. Am I assuming too much, or am I correct when I say, for instance, that the cost of an urban project is in the neighbourhood of \$800 thousand and the limit to which the board will contribute is \$300 thousand? Would I be safe in saying that it is either \$300 thousand or 60 per cent?

Mr. KERR: It is 60 per cent, or \$300 thousand, whichever is the lesser.

Mr. SMALL: Suppose the project cost \$800 thousand?

Mr. KERR: Then the maximum which the board would contribute would be \$300 thousand.

Mr. SMALL: The biggest amount which the board can order is \$300 thousand; that is the maximum which they can grant out of the fund. Suppose the municipality and the railway become involved in that project to the extent of 25 per cent and 15 per cent, according to your formula?

Hon. Mr. MARLER: I do not think that is right. I think in the example which Mr. Small has just given, if the project cost \$800 thousand and the contribution from the fund is \$300 thousand, then it follows that the remaining \$500 thousand must be shared in some proportion by the municipality and the railway.

Mr. SMALL: That is what I am trying to get at. To establish your fund, is it regarded as 60 per cent?

Hon. Mr. MARLER: The 60 per cent figure is merely a national one. The contribution from the fund is a national contribution in respect to any project, and it must be the lower of two things: either 60 per cent of the cost of the project or \$300 thousand, whichever be the smaller amount.

In the example given, if you apply the 60 per cent rule, you will find that it comes to \$480,000; but it is being limited to \$300 thousand, therefore the fund can only contribute \$300 thousand. If, on the other hand, the cost was \$400 thousand, then the upward limit would be 60 per cent, which is \$240,000. I hope I have made myself clear.

Mr. SMALL: I can follow you on that. I am trying to get at the stipulation for \$7 million on the formula, which I did not want to happen. I want to solve the problem by removing the provision whereby it can only be applied by having the project built. According to the figures which the engineer gave us, he said there was about one-fifth of the total of approximately \$29,360; so \$30,000 would be one-fifth of that; so that one fifth of that would be for 6 thousand grade separations all over the dominion of Canada. What percentage of them would be urban, and what number would be rural? The thing is to get as many of them built in a year as possible, and to spread them over the whole of the country so that this amount of \$5 million would be expended. Therefore in large cities where they have \$800 thousand up to \$1 million, most of that expenditure is \$300 thousand for any one project.

Hon. Mr. MARLER: That is right.

Mr. SMALL: Therefore if any other money is put into the fund it must come from the municipalities, the railways, or the provinces?

Hon. Mr. MARLER: That is quite correct.

Mr. SMALL: I cannot conceive of how there is going to be unexpended money if we are going to advance a lot of these projects, with the purpose in view of solving this problem and reducing accidents.

Hon. Mr. MARLER: Do you not think that the question depends also to what extent other bodies which you have mentioned, namely the railways, the municipalities, county corporations and the provinces are willing to provide corresponding funds in any particular year? If, for example, the grade crossing fund is \$5 million, and they are perfectly willing to spend the whole of that \$5 million, they can only do so if others are willing to make contributions too.

Mr. SMALL: Let us take the Davenport project which runs somewhere over \$2 million. According to the old law, on that basis, \$150,000 was the limit.

Hon. Mr. MARLER: That is right.

Mr. SMALL: It seems to me that the railways, the municipalities, and the provinces have to supply the rest of it.

Hon. Mr. MARLER: Yes.

Mr. SMALL: There has not been enough money put into the fund to accomplish any amount of protecting which will reduce accidents. You have come up with \$5 million, but that is still not enough. The point is, is the board empowered to go ahead on its own initiative where they know there have been hazards and accidents and that this must be proceeded with?

Hon. Mr. MARLER: Mr. Chairman, I should be very much disappointed if particularly any money was left over out of the \$5 million. But I do not think anyone would be willing to recommend that the board should proceed so arbitrarily that it was determined to spend each year \$5 million regardless of whether the others who have to contribute are willing to do so or not. I am sure that there are very few members of the committee who would wish to recommend whether their city or municipality had or had not the funds that merely because the board felt that the \$5 million should be spent that orders should be issued regardless of the feelings of the municipalities and regardless of their willingness or ability to pay and that we should just bulldoze our way through the country ordering grade separation wherever we thought it should be done.

Mr. SMALL: That brings up a question there. Heretofore the percentage that the municipalities and railways paid under the old section was 40, 30 and

30. It provided that \$750,000 could be spent by the municipalities, \$750,000 by the railways, and \$1 million by the Grade Crossing Fund. Now, on that basis the railways were having difficulty raising the money to comply.

Hon. Mr. MARLER: I think that your figures are incorrect. You were starting off on the assumption that the board followed the distribution of 40, 30 and 30 and that the municipalities limited and the board limited their expenditure to keep that relationship. That is not the fact. As you pointed out a moment ago in connection with the Davenport operation the fund cost was only \$150,000 out of a total cost of \$2 million so that others necessarily had to provide, let us say, \$1,850,000 of the cost not 30 per cent of some limit that applied to the board. They had to put up without limitation and the board said we give you 40 per cent or \$150,000 whichever is the lesser. In that case you referred to, they gave \$150,000 because they could not give any more.

Mr. SMALL: The railway find difficulty in raising \$750,000 to meet their obligations which have been ordered by the board's authority and the same applies to the municipality and now you have reduced it to 25 and 15 and increased it on the railway board fund to 60 per cent and that increases it as far as the railways are concerned to \$1,250,000 or in other words, another \$500,000 and on the municipalities from \$750,000 up to \$2,250,000. The burden is still there which we cannot meet and we are never going to lick this problem if it is going to be left to the railways and the municipalities to make the application to have these grade crossings installed.

Hon. Mr. MARLER: Mr. Chairman, I think if Mr. Small will look at the situation which prevailed last year and take an example of a project where the federal contribution out of the fund would have been \$150,000 if he will apply the new formula to the same project this year he is going to find that there is a virtual doubling of the contribution from the Grade Crossing Fund and a very substantial reduction in the charge bearing on the railways and a small reduction in the charge bearing on the municipalities in the province.

Mr. HAMILTON (York West): In each individual project?

Hon. Mr. MARLER: Yes. When we are thinking about something which cost \$10,000 last year the grade Crossing Fund would have provided \$4,000, the municipalities \$3,000 and the railways \$3,000; a small project. But now, I take it, if we follow what the board suggests and if they follow on the distribution, which they seem to contemplate in their report of the \$10,000 they would pay \$6,000, the municipalities \$2,500 and the railways would pay \$1,500. In other words, in that particular example the railways contribution has been cut down by 50 per cent and there has a small reduction of the provincial-municipal share. I think there is a lightening of the burden on those you say have not enough money to go along.

Mr. HAMILTON (York West): I grant you that. But the increase in a grant of \$5 million which is the 4 per cent increase is increasing the amount of the municipalities and the railways are going to have to pay the piper.

Hon. Mr. MARLER: The railway contribution has been reduced. We are talking about a large number of municipalities spread all across the country unless we do it all in Toronto and God forbid.

Mr. HAMILTON (York West): That is where it is needed.

Hon. Mr. MARLER: Montreal could also give you some suggestions on the question.

Mr. SMALL: I am not bringing this up in connection with Toronto at all. According to your figures there are 6,000 grade crossings in the Dominion of

Canada and there is ample scope throughout the country. \$15 million would be the simple figures I would be interested in to give justice to everyone.

Hon. Mr. MARLER: I do hope that the board is going to be able to spend \$5 million and that will not be too much of a burden on any individual municipality or the railways. If we do more it will be more to be paid by the railways, but I can say personally I have not had any very strong representations from the railway companies complaining about this awful burden that was about to be thrown on them.

Mr. MURPHY (*Lambton West*): Take this hypothetical case: you are limited to \$5 million now and suppose you have spent your \$5 million in the first nine months of the year, can you still undertake projects that might involve 2, 3 or 4 million and not make the payments until the end of that year?

Mr. KERR: I think the projects could be undertaken and a grant made under the following year's fund if the board deemed it possible to do so. Sometimes the railways, if large amounts are involved, like to know before the work is undertaken or ordered just exactly how much they will have to pay and the same applies to the large cities.

Mr. MURPHY (*Lambton West*): It is quite clear that the money having been spent and where you find it necessary and urgent to proceed with additional work that it could be proceeded with and the money paid after the expiration of the year.

Mr. KERR: When it becomes available.

Mr. MURPHY (*Lambton West*): Yes.

Mr. GREEN: What is the situation with respect to the back log of applications for assistance of this kind? We have heard that there are a great many crossings still to be dealt with across Canada, but what is the board's present position with respect to applications that have not been heard? Have you got many pending or are you pretty well up to date?

Mr. KERR: I believe that there are a great many actually ordered or in the course of construction. I think at the present time there is close to \$3 million in the fund which has been committed but actually has not been paid out yet because the work is still in progress or not started so far although ordered. But there are projects taking from these funds approximately \$3 million, which are in the course of construction or ordered. As to how many others there are on which the board has not made an order, perhaps our engineer can speak with more certainty than I can on the number of projects.

Mr. GREEN: Could we have that information?

Mr. DUMONTIER: We have 64 applications for grade separations before the board which are in the process of being settled and not ready for an order yet, and 67 applications for automatic protection.

Mr. GREEN: How much money would be involved?

Mr. DUMONTIER: We do not have any estimate of the cost of these projects yet. The applications are made and the estimates are prepared by the railways as to the cost of the grade separation. We have to prepare plans in order to make these estimates.

Mr. GREEN: The board must have some idea of really how much money is apt to be involved in meeting these reports.

Mr. DUMONTIER: Well, some of these projects are reconstruction and others are construction of subways. Some of them the board does not contribute to and some the board does contribute to. If there is an elimination of the crossing the board contributes; if it is a new crossing the board does not contribute.

Mr. GREEN: There have been orders considered which involve an expenditure by the board of \$3 million?

Mr. DUMONTIER: Yes.

Mr. GREEN: And you have many other applications before you at the moment?

Mr. DUMONTIER: Yes, 64 for grade separations and 67 for automatic protection.

Mr. GREEN: I raise that point, Mr. Chairman, because it does seem to me doubtful if it is wise to put in this restriction that if there is a surplus from one year which exceeds \$2 million then the subsequent vote will be cut down by whatever that surplus may be. That is, if there remains \$3 million unspent in the fund for this year then next year the vote can only be \$4 million as I understand the legislation. I suggest to the committee that it might be wiser for the first 4 or 5 years to let these votes go into the fund and then accumulate there because there is much work to be done and obviously there is not going to be enough in the fund to carry out all the projects which should be completed. With the population of the country expanding as it is and this problem becoming greater all the time, it seems to me it would be worth giving consideration to changing that provision that once you get over that \$2 million in any one year then the fund automatically cuts down in the succeeding year.

The CHAIRMAN: In other words, if there is only \$1 million spent this year next year it would bring it up to \$6 million.

Mr. GREEN: That is the principle I think should be followed. Actually it is more beneficial because it allows it to build up to \$7 million. I do not think there should be any ceiling to it for the first 5 years in any event. Let there be \$5 million voted each year and let us see what happens to that. I think probably it will be found that will not be nearly enough to meet the needs. I do not quite agree with the proposal that there should be this ceiling put on of \$2 million. We have just had the evidence of how many of these projects there are.

Mr. JAMES: Was it not just yesterday that Mr. Fleming wanted the water squeezed out of the estimates.

Mr. SMALL: What was that?

Hon. Mr. MARLER: It was suggested yesterday Mr. Fleming had wanted to squeeze the water out of the estimates and Mr. Green's position is to put the water back in another glass.

Mr. GREEN: I think this problem is of such great magnitude that somebody has got to give a pretty bold lead if it is going to be settled; the impression across the country is that the Grade Crossing Fund is to have \$5 million a year and I think it should be left at that. Under this particular section that is not quite the case. It may be that this year, for example, because it is a new departure it may be they will only spend \$2½ million and then we will find next year automatically because this legislation reads as it does there can only be a vote of \$4½ million. I doubt the wisdom of putting on a restriction of that kind. I would rather have it this way: we will vote \$5 million and it is up to the municipalities and the railways to get busy on this grade crossing problem.

Hon. Mr. MARLER: If I might say one word on that I would like to point out to the committee that this recommendation comes from the board itself which board has actually had the experience of living with applications over a long period of time. It was not a restriction of the Board of Transport Commissioners imposed by the government. The government has accepted the

recommendation without change in any particulars so far as this part of the fund is concerned. I myself feel that it is a prudent thing to have at the beginning. I hope we are going to spend \$5 million a year and I think my honourable friend will find if he looks at it over a period that it is merely a question of whether we are going to vote \$25 million or \$33 million and it is not \$2 million every year; it is only one \$2 million.

Mr. SMALL: A minute ago it was given that there were applications for 64 grade crossings. Could you break that down and give us the figures for urban and rural?

Hon. Mr. MARLER: Perhaps Mr. Dumontier may answer the question later when he has made his calculations.

Mr. CARRICK: I do not know if it has been stated, but can you tell us what the amount is on hand at the present time? You have told us our commitments for \$3 million for next year.

Mr. KERR: I believe there has been only an interim vote for this year. This money is only a part of the present appropriation. Of \$1 million which has been voted and some part of that would be uncommitted.

Mr. DUMONTIER: There is very little uncommitted. About \$20,000. There was $\frac{1}{6}$ of the vote approved and we used that on the installation of automatic protection and I think there is about \$20,000 left.

Mr. HAMILTON (York West): Mr. Chairman, I understand that the 60, 25 and 15 was the working of that formula on the \$10,000 project which was illustrated to us and when we get to the \$1 million project the maximum contribution from the fund is \$300,000. How do we divide the rest? Is it still $\frac{5}{8}$ and $\frac{3}{8}$, say the balance of the \$70,000 as between the railway and the municipality?

Hon. Mr. MARLER: Might I answer the question. My understanding is that the proportions of 60, 25 and 15 apply to protection but on grade separations there is no such predetermination of proportions. I think the basis is that the fund makes its contribution and then decides how in the circumstances the remainder should be proportioned.

Mr. SMALL: Could I ask the question how many of the 64 grade crossings are urban and rural?

Mr. DUMONTIER: There are about 10 of these projects which are urban.

Mr. SMALL: And the balance of 54 are in rural. You are doing a good job in rural there.

Mr. BARNETT: Mr. Chairman, I would like to make a few comments. I have one or two questions I would like to ask. Much of the questioning has obviously come from people who live in the other portions of Canada, where the counties, municipalities, and so on enter into the picture to a much greater extent that they do in the part of Canada from which I come.

I might offer a comment on the matter of other corporations being involved: in British Columbia the question of private roads constructed by our logging corporations could very easily enter into this picture as one example.

There are two questions which I have in mind and which I would like to have clarified. One of them is in respect to the fact that the ceiling provided for in the bill is being raised. I wonder if we could have put on the record some figures in respect to the order of expenditures involved in major grade separation projects, so that we might assess what, on the average, would be the amount of contribution for those projects. I had in mind where in a major highway a four line highway separation was involved. Could we have some information on the order of expenditure involved in such a project?

When we would be in a position to assess in our own minds the adequacy or otherwise of the ceiling proposed in the bill. And I have one other question as well.

Mr. DUMONTIER: If we look at the projects approved last year we will see that the total estimated cost was \$2,430,000, with an average cost of \$221,000 for the overhead projects approved last year which totalled eleven. One of them is quite an elaborate project which cost \$850,000 which is considered high for projects of this nature.

There were four subways approved last year for which we had an estimated cost of \$2,560,000 with an average cost of \$640,000 for the four of them.

Mr. BARNETT: That covers the point I had in mind. The other question might be considered more of a constitutional one. I believe the statement was made earlier that the board considered that it had no jurisdiction in respect to an order in regard to the right of expenditure by a province, or by Her Majesty in the right of a province. That aspect of the matter, I suggest, is perhaps of more importance in a province like British Columbia where most of the highway construction, and where most of our roads are provincial highways. I was wondering about that interpretation and where the board found its constitutional authority in respect to a ruling for municipal corporations.

I know there is a phrase very current in British Columbia that the municipalities are the creatures of the province. In that case it seems to me that they are in fact part of Her Majesty in the right of the province, and I was wondering if we could have some explanation as to how, in practical application, the board considers certain portions of expenditures to be divisible, and how it has been worked out in practice. Perhaps some comment might be made as to how it is done in a matter of this kind. The decisions of the board are not considered to be binding upon the province or upon the provincial highway authorities.

Mr. KERR: Quite specifically, the Act gives the board power to apportion cost on the municipality, but it does not mention Her Majesty; it does not mention the Crown. In view of the fact that the Crown is not mentioned in this provision, the board feels that it has no power, in view of the absence of the mention of the Crown, to apportion any part of the cost on the Crown.

There is a sub-section in the grade Crossing section which is not being touched at all in this bill. This subsection 3 provides that the province may contribute to the Grade Crossing Fund and that the board may apportion monies out of that fund subject to any conditions and restrictions made and imposed by the province; but the province has the power, under the present Act, to put money into the fund if it wants to, and to determine the conditions under which the board should use that money.

Mr. BARNETT: Am I to understand that in the event of a provincial highway authority deciding to construct a major highway crossing a mainline railway, that the board has no power to determine the nature of that crossing except with the consent of the province?

Mr. KERR: In that case the province comes to the board and asks for the board's permission to build a certain type of crossing; it comes to the board and it gets the board's permission. I am speaking of the lack of the power to compel a province to contribute any monies, where there is an existing crossing, but the highway part of which is under provincial jurisdiction. Some party, or the board itself, thinks that protection should be put in there, and the province thinks otherwise; the board has no power to say to the province: "You must contribute to the cost of this protection."

Mr. BARNETT: Do I understand that in the event of a new crossing, the provincial authority would have to have its plans approved by the board?

Mr. KERR: That is right.

Mr. BARNETT: But the board has no authority to direct a province to make any change in respect to an existing crossing?

Mr. KERR: It has not the power to order it to pay money towards the cost. When a province comes to us seeking some change in a provincial highway, or some protection, what it gets is called a "consent order", and in that order the board recites the fact that it is made with the consent of the province, and directs that the province pay some part of the cost, the Act gives the board power to order the municipality to pay.

Mr. BARNETT: My other question was with respect to how it was that in view of the fact that the municipalities are creatures of the province, therefore indirectly apparently they have not any direct relationship with the province, but that may be an academic question.

Mr. KERR: As you may know, there is a provision in the Interpretation Act to the general effect that the Crown is not bound by any statute unless it is expressly so declared in the statute. This provision of the Railway Act does not mention the Crown; consequently the board has no power to compel the Crown to contribute. But that does not apply in the case of a municipality. A municipality is not the Crown, so the Act does empower it to provide an order against a municipality.

Mr. HOSKING: Can the board go into a city and tell them they are going to have to spend money to fix crossings there, whether the municipality wants them fixed or not? Is that the position?

Hon. Mr. MARLER: It is a matter of judgment as to whether they should exercise that power or not, but that is the case.

Mr. HOSKING: I do hope they will be very reticent in that respect, because municipalities do not have very many rights, and their responsibilities are extremely heavy with the expansion which is going on.

Hon. Mr. MARLER: In practice it has been the other way around, with municipalities asking for grade separation and protection rather than having them imposed upon them.

Mr. HOWE (*Wellington-Hurón*): On item 6, this fund does not apply to any new construction where new highways are being built, when those highways find—they are not helped in the building of any expensive overpasses which are necessary at highway crossings for new highway construction. The crossings have to be there for a period of three years before anything can be done.

Mr. KERR: Well, if it is a new grade separation, subway, or overhead crossing which is ordered there for the protection of a level crossing—in other words, which is going to take the place of a level crossing, then that three year limitation does not apply, because the level crossing has been there for three years and the board can order a subway built at that level crossing. But where you have no level crossing, and a new highway is to be constructed, the board can only make a contribution after the crossing has been in existence for three years, make a contribution for its protection from the fund.

Mr. LAVIGNE: What would be the case with respect to re-location? I have in mind a case where one municipality is going to be affected and it is not willing to accept a re-location. Would they be responsible for the cost of the underpass or overpass, as the case may be?

Mr. KERR: The board has the power to say who will bear the cost, provided it is a party interested, such as a municipality.

Mr. LAVIGNE: Who would have to bear the cost of it, the municipality in which it is located, or the municipality in which it is going to be built?

Mr. KERR: The board would have to deal with that kind of case when it came before it. I do not know what the decision of the board would be; but it has the power to apportion the cost, and the board would determine it.

Mr. LAVIGNE: It is a case of charging somebody else for something that they do not want.

The CHAIRMAN: Does clause 1 carry?

1. Section 262 of the *Railway Act*, chapter 234 of the Revised Statutes of Canada, 1952, is repealed and the following substituted therefor:

"262. Notwithstanding anything in this Act or any other Act, the Board may order what portion, if any, of the cost to be borne respectively by the company, municipal or other corporation or person in respect of any order made by the Board under section 259, 260 or 261, and such order is binding on and enforceable against any railway company, municipal or other corporation or person named in such order."

I shall now call upon Mr. Spence.

Mr. SPENCE (*Counsel for the Canadian Pacific Railway*): Mr. Chairman, my name is Spence and I represent the Canadian Pacific Railway today. I have with me Mr. G. E. Shaw, our engineer of bridges, and Mr. R. C. Steele our engineer of signals. We are here to place ourselves at the disposal of the committee and to answer, if we can, any questions which the members of the committee might wish to ask us. However, there are a few comments I would like to make of my own accord, which I hope will help the committee with respect to grade crossings.

To begin with, we are not opposing anything contained in bill 259; but there is one subsection near the end of the bill which gives us a little misgivings. However, apart from that, all the provisions of the bill have our warmest support.

I think the Board of Transport Commissioners is to be congratulated upon its report, and for the very wise recommendations which it made for amendment to the legislation. I want to speak particularly not about what is in the bill, but about two small provisions which might be added to make the bill even more useful and perhaps more workable and fairer pieces of legislation than it is in its present form.

My first suggestion has to do with the matter which was under discussion just a few minutes ago, with relation to subsection 1 of the bill which deals with section 262 of the Act. That section empowers the board in dealing with the protection of highway crossings, to apportion the cost between the railway company and a municipal or other corporation involved. That section is perfectly fair, and the board, over the years, has in our estimation administered it very fairly to all parties concerned.

But in recent years, a very peculiar situation has arisen which was mentioned a few minutes ago. The section was first framed back in the time when most roads were under the control of a municipality or a county; there were no networks of provincial highways such as we know them today. When, however, in more recent years the board began to deal with grade crossings which came under provincial jurisdiction, some provinces looked at this section and pointed out that as it did not name the Crown specifically, therefore the board did not have the power to order a province to contribute towards grade crossing protection. The board has acceded to this argument, and the strange result is that at crossings where the board finds protection is necessary, it can order the road authority to contribute, if that authority happens to be a municipality or a county, but it cannot do so if the road authority is the

provincial department of highways. Its powers over the municipality and the county are clear, even though these are creatures of the province, but when the board deals with a provincial department itself, it cannot do more than accept such an amount by way of contribution as the department of highways offers to contribute.

The result is that every once in a while, perhaps not very often, but occasionally, we encounter a case of a provincial highway crossing which the board considers should be protected by an automatic signal, or a grade separation, in the interest of safety, but due to some disagreement the province either refuses altogether to contribute or refuses to consider the contribution which the board thinks would be fair, and as in justice to the railways the board will not order the railways to pay the whole of the cost of the protection, the crossing may remain there without protection, even though the board thinks that protection is necessary.

I suggest that this whole difficulty could be overcome merely by the insertion of the words "the Crown" in the third line, and in the sixth line of this section 262, so that the board would be empowered to order what proportion, if any, of the cost is to be borne by the Crown, municipality, or other corporation.

I want to make it clear that I made this proposal to the Board of Transport Commissioners during the hearings that led up to this report and the board declined to consider it seriously for two reasons. First, that it feared a possible controversy in provincial-dominion relations; and secondly the board did not want to reach out for the additional jurisdiction which it did not have. I am no one to judge the gravity of a political situation, but it does seem to me that the board's fears may have been exaggerated, particularly when the board is already empowered under the section to make orders for contribution against provincial emanations such as counties and municipalities. As to the question of jurisdiction I should think parliament would want the board to have the most complete jurisdiction possible in matters of public safety where railways are concerned.

Mr. CARRICK: Has any question ever arisen as to the constitutional validity of this legislation you are suggesting?

Mr. SPENCE: It has been discussed with the board at times. It was discussed very briefly before the board at the hearings which led up to this matter but of course the board was not anxious to go into the details at that time and we did not have a full debate on the subject.

Mr. CARRICK: Have you satisfied yourself that the dominion could enact such legislation?

Mr. SPENCE: Yes. I think that is so. There might be a controversy as I say but I do think in matters of railway legislation that the dominion should have powers of this kind and those powers have been assumed already in section 262 when it gives parliament power to make assessments against counties and municipalities which are provincial emanations.

Hon. Mr. MARLER: There are many other emanations of the Crown in the right of the province now quite clearly by such provisions of the Act. Because they are emanations of the Crown in the right of the province does not give them special status. We know that the telephone companies can be created in the same way and commercial corporations and no one would suggest that merely because they are created by the provincial legislature they were not subject to the provisions of this Act. I think the general thinking has been because the Crown in the right of the province was not mentioned there could be no jurisdiction in the Board of Transport Commissioners to affect the rights of the province.

Mr. SPENCE: Now, of course, from the beginning to the end of the board's investigation the board was confronted with the fact that some means should be found for allotting to the provinces their fair share of the cost of highway crossing protection. Highway crossings were at one time pretty well local problems involving mainly the local traffic of the municipalities or counties surrounding them. Nowadays with traffic moving hundreds of miles far and wide the problem is going to be more and more a provincial question and even a national question. Some provinces are recognizing this fact and as the board travelled across Canada there were some offers of extremely generous co-operation from some of the provinces in this problem of grade crossing protection. I do not suggest anything should be done to discourage that co-operation but I do suggest that the best way to have an impartial apportionment of the burden of grade crossing projects with complete uniformity throughout Canada is to fix full discretion and authority for that enforcement in the hands of the board, and one way I suggest that might be done is by an addition of this kind to section 262 of the Act.

Now, the second way in which I suggest, with respect, that this bill might be made even better is by the addition of a change implementing the board's recommendation number 4. That recommendation reads as follows; and is on page 72 of the board's report:

Contributions should be permitted towards the annual cost of maintenance and operation of automatic signals installed at crossings after the amendment comes into force, the contribution in respect of any one crossing not to exceed for any year the actual cost for that year nor exceed \$200.

We in the railways were somewhat disappointed to find that the bill did not contain this provision. I will try to explain why it is very important to us. When the board decides that a crossing needs additional protection and makes an order requiring the installation of automatic flashing lights or some other form of automatic protection, it almost invariably orders the cost of installation to be shared between the Grade Crossing Fund, the municipality and the railway. That is the initial expense, and with the cost of equipment as high as it is, the assistance received from the Grade Crossing Fund is very welcome to the municipality and the railway. However, this initial expense is soon paid once and for all whereas the maintenance of the device thereafter becomes a permanent burden. Maintenance cannot be assisted from the Grade Crossing Fund under the Act as it is at present and will not be able to be assisted under this bill as it stands. The necessity will be, therefore, that the municipality and the railway will have to pay it. Now, the average maintenance cost of a set of automatic flashing lights is about \$550 a year. A small municipality paying on only one or two of these is not too badly off. A railway company on the other hand has them all over its system and as the numbers increase the burden becomes heavier year by year and never decreases. I have been speaking only of maintenance, but the same thing applies to the cost of operation of this equipment, for example, the wages of gatemen and other employees who operate manual and electrical gates. Last year the C.P.R.'s total cost of maintenance of this kind of equipment was estimated at \$179,000 and cost of operation was \$272,800, making a total of \$452,000. I have a statement of that, Mr. Chairman, prepared and I might have this passed around for the information of the members.

Then, I have also another statement which shows the way in which the cost of grade separation projects is increasing year by year. This statement shows all actual expenditures on grade separation projects for the last several years. I will pass that around also. Now, we are not complaining of the expenditures that we have on these projects. We are not complaining about

the maintenance of this automatic protection. We can carry that amount of expense. What I want to draw the committee's attention to is this, that the Grade Crossing Fund is now proposed to be increased from \$1 million to \$5 million a year and that means that there is going to be a very greatly expanded program of grade crossing protection both in subways and automatic signals. Now, that will cause this permanent and irreducible burden on us to grow and grow each year. As it becomes heavier it means only naturally that railways and municipalities will look with less enthusiasm on the proposal for grade crossing protection. It is the cumulative effect of these costs which causes us concern. I suppose it is the same cumulative effect that the board's proposal would have upon the Grade Crossing Fund that caused the suggestion to be dropped in a preparation of the bill. However, I submit with respect that if there is good reason for the national treasury to assist in the cost of installation of grade crossing protection there is equally good reason for a contribution to maintenance and operation.

During the debates upon this measure in the House I noticed that many of the honourable members expressed the view that the fund might be increased to more than \$5 million a year and some views of that kind were expressed here this morning. I do not entirely share that opinion. In fact, I think the amount I suggested to the board during the proceedings was \$4 million a year for an experimental period. But if we are going to give to the board \$5 million it seems to me that the time to do it is later when the fund, contributing to maintenance, is beginning to feel the cumulative effect which I have mentioned.

We in the railways want to do what we can to help in this level crossing problem even though it has been caused entirely by our competitors, the bus, the truck and the private automobile. However, as you all know we can hardly be said to be rolling in wealth these days and all I ask is that you be as gentle as you can in loading us with extra expenses. These subways, bridges, and signals go to facilitate the traffic of those who are taking business away from us and there are limits beyond which we cannot go.

Finally I want to speak on the provision of the bill on which I said I had some misgivings. That is subsection 8 of section 265 which you will find on page 3 of the bill. It provides that:

“(8) Where a highway project involves the construction of a grade separation crossing and the closing of an existing crossing at rail level or the diversion therefrom of substantially all highway traffic using it, the grade separation shall, if the Board so directs, be deemed to be a work for the protection, safety and convenience of the public in respect of that existing crossing.

At the present time the board cannot authorize a contribution from the fund to a grade separation unless the new structure results in the closing of an old level crossing. This subsection would allow a contribution to be made even though the original crossing were to remain open provided that substantially that all of the highway traffic using the old crossing would be diverted to the new crossing. Two things trouble me. The first is that it is going to be almost impossible for the board to make a firm ruling as to what constitutes “substantially all” of the highway traffic. I am afraid that may lead to many disputes and perhaps some discontent on the part of the highway authorities and I think there is bound to be a gradual relaxation in the application of the section as it goes on. Secondly, if substantially all of the highway traffic is to be diverted from the level crossing, there seems to be very little reason why the crossing should not be closed, and from the standpoint of safety that would be the most desirable thing. We have found occasions in which this question has arisen under the Act as it stands at present and we have got around the problem in

this way: if the crossing left open is only for the purpose of obtaining access of a few residents to their property we make the crossing private and it is closed to the public. The public crossing by grade separations is still able to get the contribution which is obtained from the Grade Crossing Fund. I think in the cases where it is essential to leave the crossing open for a few users, I think that might be done in the future. If a crossing is allowed to remain open as a public crossing the hazard would still be there, perhaps to a greatly reduced extent, but there will still be some hazard which may grow again as time goes on. Although at the time of the board's order traffic may be reduced, as the character of the neighbourhood changes the crossing may be used more and more and may become just as much of a danger as it was before. The final result will be that money has been expended from the Grade Crossing Fund without effect.

We are here at the disposal of the committee and I thank you very much.

The CHAIRMAN: It being one o'clock I think we will adjourn until 3.30 this afternoon.

AFTERNOON SITTING

THURSDAY, May 5, 1955.

3:30 p.m.

The CHAIRMAN: Order, gentlemen. We would now like to hear from Mr. J. W. G. MacDougall, Commission Counsel for the Canadian National Railways.

Mr. GREEN: Mr. Chairman, before we hear from Mr. MacDougall I would like to ask Mr. Spence a question.

The CHAIRMAN: Very well.

Mr. GREEN: Mr. Spence, you tabled two statements this morning. One of them shows the estimated cost to your company of maintenance and operation of highway crossing protection devices for one year, 1954.

Mr. SPENCE: Yes sir.

Mr. GREEN: Amounting to \$452,033; that would be the estimated amount spent by the Canadian Pacific Railway.

Mr. SPENCE: Yes sir. There was \$179,000 under the heading of maintenance, which was an estimate. But the next figure, \$272,805 under the heading of operation was the amount actually expended as shown on the books of the Canadian Pacific Railway; the total figure is \$452,000 just for the Canadian Pacific Railway Company.

Mr. GREEN: Would those figures be approximately the same for the preceding four years?

Mr. SPENCE: Mr. Steele, our engineer of signals, perhaps might answer your question.

Mr. STEELE (*Engineer of Signals, Canadian Pacific Railway Company*): I can give you the actual figures of operation for the two preceding years.

Mr. GREEN: You also filed a statement which shows your expenditure for grade separation projects for the five year period, 1950-1954 inclusive, which amounts to \$1,124,275. As I understand it, that was money actually spent on grade separation projects?

Mr. SPENCE: Yes sir.

Mr. GREEN: Your figure for maintenance and operation of projects already installed in the year 1954 is almost half of the total amount spent for the five years in putting in these projects; and if you multiply that \$452,033 by five, that is, if you add it up for a five year period, which is the length of time

covered by the statistics for the cost of installations of the projects, you reach the result that it cost you twice as much to maintain and operate the signals already in existence as it did to put in new projects. Is that the case or not? That is why I asked about the figures for maintenance of operation for the preceding four years.

Mr. SPENCE: Perhaps I might explain that the statement on maintenance and operation has to do with automatic signals such as flashing lights, automatic gates, manually operated gates, and so on; whereas the other statement has to do with grade separation projects. Now, these have grown very substantially between 1950 and 1954; and as you will see in 1950 our expenditure was \$75,000; in 1951 it was \$57,000; in 1952, it was \$156,000; in 1953 it was \$394,000; and in 1954, it was \$440,000.

That shows a very substantial growth in these projects. There are more of them coming forward and there have been in the last two or three years. The demands for grade crossing protection perhaps has not grown in the same proportion, and I think it would not show the same indication of growth there as it would in respect of the former.

Mr. GREEN: Let us take the year 1954. You spent for separation projects in that year \$440,280, and for maintenance and operation of highway crossing protection devices the cost amounted to \$452,033.

Mr. SPENCE: Yes sir.

Mr. GREEN: Is that an accurate picture of what has been going on? In other words, has it cost you more to maintain and operate existing warning signals than it cost you to put in new separation projects?

Mr. SPENCE: Yes.

Mr. STEELE: It was \$452,000 in 1954, for the cost of operation and maintenance of signal protection at crossings; the other figure is for grade separation which is not tied in at all with this. It is entirely separate.

Mr. GREEN: I realize that they are not connected.

Mr. SPENCE: I think it is correct to say that that is what these figures indicate; that at any rate in 1954 it cost us more for maintenance and operation of signal protection than it cost us for grade separation; and the point I was trying to make on the first exhibit was that \$452,000 for signals is something that we are fixed with for all time, and which keeps accumulating and getting larger and larger each year. It may be that in some years we will not have an expenditure of anything like that amount for subways and overhead projects. But once automatic protection is put in at a crossing we have to meet the requirements each year for that crossing. It might well be that in time we would have to spend a very considerably greater amount for maintenance of automatic protection, particularly if most of this \$5 million is applied in that way, than we would for initial expenditures.

Mr. GREEN: So your submission will be that you thought that the Grade Crossing Fund should be able to contribute to the cost of maintenance and operation of these highway crossing protection devices; is that correct?

Mr. SPENCE: Yes. We feel that when the fund goes up and the program is being accelerated, the maintenance cost is going to go up too and we would be charged with all of that, and that the fund should help us on the one side as well as on the other.

Mr. GREEN: You are basing that suggestion on the recommendations made by the board in their report contained in paragraph 4 on page 2 which reads as follows:

(4) Contributions should be permitted towards the annual cost of maintenance and operation of automatic signals installed at crossings

after the amount comes into force, the contribution in respect of any one crossing not to exceed for any year the actual cost for that year, nor exceed \$200.

Mr. SPENCE: Exactly!

Mr. GREEN: You are asking that this recommendation be put in the bill and so written into the Railway Act?

Mr. SPENCE: We are.

Mr. HOSKING: I would like to ask a question. I am most sympathetic to the railways in their problems, but as a Canadian citizen, do you think that the Dominion government ought to dictate to a province in regard to whether the railways should put in these underpasses and grade separations of which you speak?

Do you think that we ought to step into a province and say to the provincial government: "Now, you do this because we think it is good for you"?

We have done that in the case of the municipalities, but I do not know whether I can agree with it. Certainly, when I was in a city council I did not agree to it. I thought that the municipality had rights by virtue of being part of the province and those rights should be respected; and I would just like to know from you—not in your official capacity as a representative of the Canadian Pacific Railway, but as a Canadian citizen—if you think that the Dominion government should go to the provinces and say: "You do this because it is good for you".

Mr. SPENCE: Well, speaking in the way you put it, I think that the board is always very well aware of the viewpoint of the municipalities as well as of the provinces, and I do not know of any case in which the board had ridden roughshod over any expressed desire of any of the parties to an application. There are times when there is perhaps a slight disagreement as to how much should be apportioned between the parties, and when that happens the board hears all sides of the question and comes up with a judicial judgment on the case. But I do not think there is any fear that if the power is given to the board to say that whatever the highway authority is it should abide by the board's decision as to what is fair. I do not think that there is any fear that the board would abuse that power, and I would think that it is the only way in which we can get uniformity and fair application of the fund to all types of crossings.

Mr. HOSKING: I cannot agree with you when you say that when you give people power they do not use it. They do!

But is there any chance, if they do not have this power, that there will be a certain province which will object to its being done, and eventually that the grade crossings in that province will be bad, and that the people in that province will say: "Why don't we do here what they do in the other provinces, and correct that?" Without this coercion which you would have to put on to make them accept it, could it not be worked out?

Mr. SPENCE: I think that perhaps there will be an occasional crossing where, since it is a provincial crossing, the amount contributed by the highway authority will not be on the same basis as if it were a municipal council crossing, that is, that the board will not be able to apportion what it thinks to be a fair amount to the highway authorities simply because it is a provincial authority which it cannot compel.

Mr. HOSKING: Under those conditions, would the Canadian Pacific Railway not say: "We won't touch it". And let it stand there?

Mr. SPENCE: We cannot do that. Once we get an order from the board we have to do something about it.

Mr. HOSKING: Is the board unreasonable then in those provinces where you do not get co-operation? Is the board unreasonable in asking for this to be done? Should the board not use more discretion and say: "We will just wait until we get a government in that province which will assume the cost".

Mr. SPENCER: I do not think that the board has been unreasonable in that connection in the past at all.

Mr. HOSKING: The present arrangement is not too bad, then?

Mr. SPENCE: No; there is just the occasional case when the plan is thrown out because the province does not see fit to accept the board's point of view on what would be a fair apportionment.

Mr. CARRICK: I would like to ask one question in connection with the statement of the cost of maintenance and operation of the highway crossing protection devices; I see there are 586 installations mentioned. Were a number of those installations put in when there was contribution by the board as well as by the province and the municipality and the railway?

Mr. SPENCE: Oh yes, I would think that in nearly all, if not all of them, there was.

Mr. STEELE: Yes, that percentage of Canadian Pacific Railway participation is shown in the second column to the right.

Mr. CARRICK: Do you suggest that the board can assume anything beyond \$200 a year? Do you suggest that the provinces and municipalities should make a contribution to the cost of maintenance?

Mr. SPENCE: Yes; I think it should be apportioned between the municipalities and the railways; and I think that this \$200 contribution from the Grade Crossing Fund will be of assistance.

Mr. CARRICK: In addition you think that the municipality and the province ought to pay a proportional amount?

Mr. SPENCE: Oh yes, yes.

Mr. HAHN: You suggest that the word Crown be added in the first part of this?

Mr. SPENCE: Yes.

Mr. HAHN: And it says in the subclause at the top of page 3 of the bill:

(6) No amount shall be applied by the Board out of The Railway Grade Crossing Fund towards the cost of work actually done in respect of any crossing unless that crossing has been in existence at least three years prior to the making of the order by the Board to apply the amount for that purpose.

I wonder whether or not you took that into consideration when you made the proposal, by reason of the fact that if the board suggests that the Crown should assist in the building of these grade crossings, it would depend entirely on a contribution from the government to this assistance at a later date by reason of the fact that the crossing had to be in effect for three years before a contribution is forthcoming. Did you consider that when you made your proposal earlier?

Mr. SPENCE: Well, sir, I am not sure that I get the import of your question; but I think that subsection 6 of section 265 would apply in either case, that is, whether the province was building a new crossing or whether the railway was, or a municipality; and that neither the province nor the municipality should be entitled to draw from the fund for the purpose of helping to create a new crossing; and if after three years the conditions have changed, or if a serious reason for crossing protection has arisen which did not exist when the crossing was built, I think it would be fair for the fund to contribute.

Mr. HAHN: Earlier today we learned that the provincial highways in British Columbia, or most of the highways there are provincial highways. When they are building these roads it sometimes means that the best time to put in an underpass or an overpass is when the road is being built.

Mr. SPENCE: That is right.

Mr. HAHN: Years later when you go to the federal authority and ask for a federal contribution to the underpass or overpass, your chances of collection would be pretty slim, whether it be British Columbia or any other province, because the works have been in existence for some time. I know that part of it is new, and therefore possibly—what would the earlier reading be, Mr. Minister?

Hon. Mr. MARLER: My understanding is that a new crossing would not have any right to participation at all, necessarily.

Mr. HAHN: It might be much easier to build a level crossing, but they considered it was better to build an overpass or an underpass immediately and thereby save many thousands of dollars of renovation at a later date. It has to be in existence for three years before they can collect, or before they can even ask for a contribution, that would have a material effect on the building of a highway, I would say, at that time.

Mr. SPENCER: Well, of course the whole theory of this section of the Act is that there is danger at level crossings and it is desirable not to increase that danger by building new level crossings if they can be avoided. Now, if the municipality or the province is sufficiently anxious to build a new crossing, then the theory is that it should pay the expenses of protecting the crossing at that time and if a grade separation is needed, then the authorities causing the danger should be prepared to do it. Now, if a grade separation is not necessary, and a highway is built, a level crossing is put in; but later on traffic may increase, because times change, and perhaps the population grows up in the vicinity of the crossing, and then it is desirable that all parties should come in including the Grade Crossing Fund, to take care of a situation which has later arisen. But I think that it would be contrary to the intention of the Act to make it possible for contributions to be made from the Grade Crossing Fund at the time the crossing was built; it would tend to increase the number of such crossings, and it would be easier to build them.

Mr. HAHN: I could possibly agree with you except that I think we should have a grade separation whenever and wherever it is possible; but I can still see where these things are concerned that it is much simpler and easier to run a level crossing than it might be to go to a province and say: "We will let this go in there on a level basis for the next three years and then it will have established its need, and we will get 60 per cent contribution from the federal authorities." In the meantime that crossing is a continual hazard. I would say that from the point of view I have that wherever such action is undertaken when we have a new highway being constructed they make use of the very fact that they are in the form of construction and we should try to get these grade separations immediately and if the contribution can be forthcoming normally at a later date, at that point it should be forthcoming at that time. I can see from your statement of the cost of operation of these mechanical devices it would save you money to begin with in that way and also help to save lives.

Mr. SPENCE: Yes. Of course the board examines these things very carefully. When any authority comes forward and asks for a new crossing from the board, the board is very conscientious about examining all the dangers and possibilities of that crossing. It knows reasonably well how much traffic is

going to be used over that crossing and it might very well be in the case you suggest that the board would say we do not approve of and will not grant you leave for a level crossing here because it is dangerous, or that it is going to be evident almost immediately that grade separation is necessary. I think the board would exercise its discretion in that way to see there is no money spent unnecessarily.

Mr. HAHN: I wonder if the minister thinks that.

Hon. Mr. MARLER: I do think so, yes.

Mr. BARNETT: Mr. Chairman, turning to the questions in relation to this proposal from the C.P.R. with respect to the cost of operation and maintenance of the protection devices and relating it somewhat as Mr. Green did earlier to the other expenses in respect to grade separation projects, the representative of the C.P.R. has told the committee they anticipate an increase in the maintenance cost as a result of expanded projects of extending protection devices. I take it that it is more or less self evident that where a grade separation project is carried out that that eliminates the matter of any maintenance on an automatic signal device of that kind.

Mr. SPENCE: There will be some maintenance of the subway. Usually these things are put in in concrete these days and maintenance is not high in any one year. I think that the maintenance is a minor feature after a subway has been built, for a certain period of years. It may become important after the subway gets old but that perhaps is not a large amount every year. It may be that we will have to do some concrete work one year and nothing more for five years. I think Mr. Shaw should be speaking on this.

Mr. BARNETT: Before Mr. Shaw starts I would like to ask you one further question. The further question I would like to ask is of the projects listed in your second table how many of them as a result of the grade separation projects eliminate the former level crossing in which some sort of protection signalling device was maintained.

Mr. SPENCE: I think Mr. Shaw might answer that.

Mr. G. E. SHAW (*Engineer of Bridges, Canadian Pacific Railways*): We have some figures for track structure and some figures which perhaps represent a typical subway. A typical subway with concrete retaining walls would cost in the neighbourhood of \$468,000. The annual cost in the sinking fund and maintenance of this structure would be in the neighbourhood of \$37,000 a year. The sinking fund, maintenance and damage would be in the neighbourhood of \$37,000, a year. That represents practically 7.4 per cent of the capital cost.

Mr. BARNETT: I take it the figures you quote in respect to the initial cost would include the sum contributed by all parties.

Mr. SHAW: Yes.

Mr. BARNETT: You are not quoting figures as the annual cost to the railway?

Mr. SHAW: No. Regardless of who pays that is what the total cost would be.

Mr. BARNETT: Are you suggesting that the annual cost of a crossing if it has been changed to one in which there is a grade separation exceeds the cost of the maintenance of a level crossing with some type of protective device?

Mr. SHAW: There is no doubt about that. Grade separation costs you many times more than a mechanical device to maintain. Here is a place where your annual cost is \$370,000.

Mr. SPENCE: That is of course including the cost of the money invested. That \$37,000 is the annual cost of the sinking fund, interest, and maintenance and is based on $6\frac{1}{2}$ per cent of interest on your money.

Mr. BARNETT: Have you figured out the railroad's share of the money?

Mr. SPENCE: That is only a typical example of a subway cost.

Mr. BARNETT: What I am trying to get clear in my mind, Mr. Chairman, is the relationship of the proposal advanced by the representatives of the C.P.R. that the maintenance cost of these protective devices should come in part at least from the Grade Crossing Fund and on the other hand some remarks which were made by the representative of the C.P.R. in answer to another question expressing their views as to the desirability of the establishment of grade separations. The question that I would like to have clarified is their opinion as to the relative value and importance of utilizing the funds in the direction of eliminating level crossing and as it appears to me thereby in effect reducing the maintenance cost to the railway of these devices as compared to the proposal you previously advanced?

Mr. SPENCE: There was a great deal of discussion of the relative advantages of protective devices and grade separation before the hearings of the board and I do not think that any definite conclusion was ever reached, although the board in its report is inclined to take the view that when a certain amount of money is to be spent it is better to apply that money to a great number of small expenditures at a great number of crossings than concentrate the expenditure in big lumps for grade separation. As far as the railway company is concerned, we are perhaps inclined to the view that from our own point of view of interest and economic position perhaps grade separations are more desirable because then we are rid of the problem forever except for a certain amount of maintenance and carrying charges. But a good deal depends of course on how much is charged in each case. As far as grade separations are concerned there is no uniformity. The Board applies the benefit theory. That is, it sizes up each individual situation and says that the municipality is going to receive a certain proportion of the benefit here because this is a very heavily travelled road which is going to be relieved of a great deal of congestion. In another case it may find that the railroad company has a great many trains running across the crossing and its operations may be hampered by the fact that there is a level crossing there and the railway company gets more benefit in one case than another. I do not think we can lay down any formula and the board has not attempted to lay down any formula for contributions in grade separations. It says it considers that that is a matter which it has to consider in each individual case. As far as the automatic protection is concerned the 15 and 25 per cent proportion is the one which it considers fair and that is where the formula can be applied.

Mr. ELLIS: How many years did you say after the construction of the subway the maintenance costs come into being?

Mr. SPENCE: Generally we consider 75 years.

Mr. SHAW: The figure I was thinking about was 75 years. Sometimes it is more and sometimes less; sometimes it is obsolete before that.

Mr. ELLIS: The figures you gave us a moment ago were based on 75 years.

Mr. SHAW: Yes.

Mr. CARRICK: Has the federal government ever made any grants to the C.P.R. for any purpose? I have an idea they have, but I am not sure what they were for.

Mr. SPENCE: Going back to the beginning of our history there was a contract.

Mr. CARRICK: No, in recent years.

Mr. SPENCE: You mean in respect of grade separations?

Mr. CARRICK: No. With respect to the funds under this Act. Apparently I am wrong if you cannot recollect. I had the idea that the government had made an outright grant to the C.P.R. and I was trying to recollect what it was for.

Mr. SPENCE: No, I am sorry I do not believe there was.

Mr. GREEN: During the depression grants were made to help keep up the tracks.

Hon. Mr. MARLER: I think that may be true.

Mr. SPENCE: During the depression there were some loans but they lasted only a short time.

Mr. J. W. G. MacDOUGALL (*Commission Counsel for the Canadian National Railways*): Mr. Chairman, my name is Macdougall and I represent the Canadian National Railways. My remarks will be relatively brief. The purpose my company has in appearing before this committee today is firstly to tell the committee that the Canadian National Railways fully support the report made by the board and bill 259 which is designed to implement that report. We feel that it is a milestone in this problem of the railway grade crossing and will improve the safety and convenience of the public in respect of railway highway grade crossings.

I agree with the remarks made by Mr. Spence that the board should be complimented upon the amount of work which it has put into the report and upon the excellence of that work.

However, I wish also while I am here to draw the attention of the committee to two points upon which my company feels that the Act as it exists today could be improved with respect to matters of safety and convenience of the public. They are not matters which deal particularly with money but rather items which deal entirely I think with safety.

I might say also at this time that we appreciate, as Mr. Green has pointed out, that the changes in the Act as now proposed raise the amount of the fund to \$5 million which will mean a large increase in the number of projects that will be undertaken and as a result will mean to the railway companies an increase in the amount of money they will spend on these projects each year. Our company's policy has been that as long as our proposition is on a fair basis we are quite prepared to assume our obligations even though they may increase because we feel that it is time that we made a real and substantial effort to attack this problem. I do not know that I can be of any great help in answering any questions the committee may have but I will be delighted to do my best.

With respect to the two points upon which we consider the Act can be improved, I have, Mr. Chairman, prepared a suggested way in which the Act can be amended to bring about these two conditions and I have copies which may be distributed, with your permission Mr. Chairman, to the members so that they will see what I am speaking about. I may say that the two points which I referred to were discussed before the board during its enquiry, not in any great detail, but were among a number which were dealt with and discussed there which the board did not make any recommendations upon in its report. We feel however in reviewing the whole problem in the light of the board's report that we should not let this moment pass without acquainting members of the committee with our views concerning two important phases of the problem and by which the public would benefit greatly.

The first one refers to section 260 of the Railway Act which section is quoted on a sheet of paper before you. The suggested wording is practically the same as it exists in the Act today with the addition of the words underlined

at the bottom of the paragraph "or that the crossing, if any, be temporarily or permanently closed". Section 260 of the Act is the one which is designed to give the board power to protect crossings and to apportion the cost of those works and to determine just what is required by way of protection. It can install automatic signals under this section or direct subways to be installed or that the railway or the roadway be diverted. The purpose of this section is to provide the means whereby the board can protect the public at a dangerous crossing.

Now, in addition to this section, the Railway Act gives the board the power to open highway grade crossings as we have heard discussed here earlier. It has the power to direct that protective devices be installed and, as I say, to divert a crossing and it is charged with the general responsibility for the safety of the public at highway crossings. There is no provision in the Act which will allow the board to control either temporarily or permanently the closing of crossings even if it is considered to be in the public interest to do so. The type of situation which arises is that a municipality may have three level crossings in 1914, and through the evolution of time perhaps, and through the construction of an overhead, or grade separation at one of these crossings, or because there has been some movement of population, three crossings are no longer necessary and the board has no power whatsoever to cut down on their number. We have the situation therefore where the board has the power to open up new crossings, and they are being opened up every day, but seldom are grade crossings eliminated, and we suggest that the board should have the power to eliminate crossings where considered necessary either permanently or temporarily. We feel that is a loophole in the board's power respecting safety at highway crossings, and the amendment is designed to give the board discretionary power with respect to the closing of crossings where they consider it is necessary in the public interest or in cases where it is the only real way in which the safety of the public can be achieved.

Now, the second amendment is the short one which is a new subsection to section 416, and the wording of that section is as follows:

416: "Any person who uses any highway crossing at rail level for the purpose of passing on foot along such highway across the railway, except during the time when such highway crossing is used for the passage of carriages, carts, horses or cattle along the said highway, is liable on summary conviction to a penalty not exceeding ten dollars, if

- (a) the company has erected and completed, pursuant to order of the board, over its railway, at or near or in lieu of such highway crossing, a foot bridge or foot bridges for the purpose of enabling persons passing on foot along such highway to cross the railway by means of such bridge or bridges, and
- (b) such foot bridge is maintained or such foot bridges are maintained by the company in good and sufficient repair."

We suggest that a serious condition exists today in that there is no provision in the Railway Act which will allow for the prosecution of persons who ignore railway highway crossing warning devices. I am sure we are all familiar with the laws and regulations with respect to street intersections and traffic lights and we know that a violation of a red light at a traffic intersection whether or not there is traffic on the highway will mean that a fine will be imposed if a peace officer reports on the situation. There is nothing in the Act to provide for prosecution of a person who ignores the existing activated crossing protection signal devices or the crossing watchmen's signal. We feel that the time has come when the public should be educated in respect to highway railway crossing signals in the same manner as they respect traffic signals.

As you probably know we have many cases where accidents happen involving persons on the highway who get on the railway crossing even when the signals are activated simply because someone ignores them and takes a chance, but in many cases they are ignored and no accidents happen. We think it would be a distinct benefit to the public generally if a safety campaign were inaugurated which would make people respect the signals more, and we feel before that can be done some penalty should be put in the Act which would publicize this fact. I think, Mr. Chairman, that is about all I have to say.

The CHAIRMAN: Thank you. Any questions?

Mr. STANTON: Mr. Chairman, in reference to that amendment to the Act which would enable the board to arbitrarily close a road, I do not think that is necessary at all. As a matter of fact, municipal townships are not in the habit of keeping roads open that are not in line with the needs of the people in that particular community. They generally look after the point of closing roads that are not used.

Mr. MACDOUGALL: I appreciate your remarks, and if the board did exercise that power arbitrarily it would be a bad thing. We have made the board responsible and we respect their discretion with respect to the protection and the safety of the public, but for some reason we are not prepared to rely on their discretion with respect to the closing of crossings if they consider that is the only way the safety of the public can be achieved, and that is the point we feel is desirable.

Mr. CARRICK: As the section exists now does the board ever feel it does not possess the power to enforce what you are trying to achieve by this amendment?

Mr. MACDOUGALL: Yes. I know the board has declined to act on that section and close a crossing where a highway exists at the time the railway was built.

Mr. CARRICK: It seems to me it would come under two expressions here: "They may make such order as to the protection, safety and convenience of the public as it deems expedient" or in the latter part of the section, "Or measures taken as under the circumstances appear to the board best adapted to remove or diminish the danger or obstruction in the opinion of the board arising or likely to arise in respect of such portion or crossing, if any, or any other crossing directly or indirectly affected."

Mr. MACDOUGALL: To my knowledge the board has always taken the position if they issued an order at one time to open a crossing they have the power to cancel the order, but there were many roads which were opened a long time before railways were built possibly and railway crossings of them still exist and are dangerous. Due to the building of other roads or lateral roads they could be eliminated; but there always seems to be a strong unwillingness to close some of these crossings even although they are not used very much, and at these crossings where the right of way is owned by the highway authorities the board has felt they do not have the right under the discretionary powers of the Act to close the crossing.

Mr. ELLIS: I would like to ask whether Mr. Macdougall feels that putting this power of closing crossing in the hands of the board might work a hardship on farmers and others who use roads which might not be used too much by the general public? In other words, I am speaking of the rural areas where it is true that a new highway might have been built which carries most of the traffic, but nevertheless there are farmers living along the rural roads who perhaps own land on both sides of the road who do use the crossing in the normal course of their operations. I would be rather hesitant to see the

board possessed of the power to close a crossing which might create a hardship and great inconvenience for even a small group of people who use that crossing in their normal working operations.

Mr. HAMILTON (*York West*): Did we not hear some of these referred to as private crossings?

Mr. MACDOUGALL: Throughout the length and breadth of the land we have many crossings which are farm or private crossings which are used by one or two farmers but not the general public, and I think there would be no question but that the railway would be prepared to provide an alternative facility. The type of thing we are thinking of is not where the closing of a crossing will work a hardship on the local citizens, but will eliminate a multiplicity of crossings where they could get by with three in places where they might have five within a mile or something of that kind which would create just that much less danger in the area.

Mr. HOSKING: How many of these would you have in the dominion now?

Mr. MACDOUGALL: Crossings?

Mr. HOSKING: Yes.

Mr. MACDOUGALL: I have no idea how many we would want closed—perhaps not many. I can think of one right now near Dorval, Quebec, where a crossing was opened up a few years ago at Pine beach, and efforts are being made to get lateral roads on both sides of the track at that point which will connect up with “subways at Dorval, and other places, but there is a level crossing in the middle, and if the municipality for any reason decides it does not want it closed there would be no power in the board to close it. There is a situation where the public might be inconvenienced, but greater safety would be created by using a subway in a high speed area.

Mr. HOSKING: How difficult would it be to give the committee a reasonably accurate idea of the number of crossings you want closed?

Mr. MACDOUGALL: Well, I would think it would be a little difficult. We would have to survey the whole country.

Mr. ELLIS: Would you not say that the municipalities would be in a better position to assess the situation in regard to the crossings to a greater degree than the board?

Mr. MACDOUGALL: It would be hard to say whether or not they would. I might say that the municipalities in many cases do close the crossings themselves, but in the aggregate it is not a great number.

Mr. JAMES: If there was a controversy the board could have a local hearing to hear both sides of the argument?

Mr. MACDOUGALL: Yes, if the people effected in the area wish to have a hearing it could be done, of course.

Mr. HOSKING: Have you anyone from the Board of Transport Commissioners who would express their views on this suggestion?

Hon. Mr. MARLER: To what suggestion are you referring?

Mr. HOSKING: The suggestion about closing the crossing?

Hon. Mr. MARLER: I suppose, Mr. Chairman, the question is really one for the committee itself to decide. My understanding is that at present if there is a proposal made that a crossing should be closed it is apparently the practice for the board to inform the municipality concerned and I am told that the practice up to the present is not to order the closing except where there is a concurrence of the municipality, and I must admit that while I rather share some of the views expressed by Mr. Macdougall, I would be hesitant personally to recommend that we should give the board power despite the opposition

of the municipality to order the closing because I think I must say I have a good deal of confidence in the views of the municipal administrations for the local problems that they have to deal with. Therefore, frankly, I do not want my rejection of the idea to be for all time, but I certainly would want to study it very carefully before enlarging the Act to give the board the power to order the closing regardless of the views of the municipalities and regardless of whether or not alternative facilities were being provided.

Mr. HAMILTON (York West): It is a pretty serious violation of property and civil rights.

Hon. Mr. MARLER: Yes. I am not invoking the constitutional aspects, but I am looking at it as a common sense question. I think the municipal authorities are best qualified to know what are local needs and how they should be dealt with. I do not mean to say that I think the municipal councils are always right. I was a member of a municipal council and I do not think that we were always right, but I think perhaps we were in a better position to assess local needs.

Mr. WESELAK: Am I correct in assuming that there is no legal provision at the moment for closing a crossing?

Hon. Mr. MARLER: I think the answer to that is that you can close with a concurrence of the municipality or you can order the closing where you have provided another facility instead. If you look at that subparagraph you will see it seems to imply the closing of a facility which has been replaced but it enables the board to keep it open if it sees fit. I think the implication is quite clear that it could likewise order the closing of it where it has provided a new facility.

Mr. WESELAK: Only?

Hon. Mr. MARLER: Yes.

Mr. JAMES: Have you any comment to make on the question of the penalty, Mr. Marler?

Hon. Mr. MARLER: I would like to tell the committee—and I am quite sure Mr. Macdougall remembers—somewhat similar suggestions were made before the board of commissioners that penalties should be enforced for highway traffic, but I know from the report of the board that it thought this was a matter which should form part of the provincial highway legislation, and it left to the province both the power and the responsibility of dealing with something that is essentially a highway problem. I do not disagree with the objectives Mr. Macdougall has in mind, because I must say I think people run unnecessary risks at highway crossings and cut through red lights on the highways when they certainly would not do it on the streets, and despite the fact the danger is much greater in one case than the other. At the same time, however, I would be a little hesitant in view of the board's failure to recommend the addition of penalties to the Act without a great deal of reflection to add this to the bill we are now considering.

Mr. ELLIS: Provisions of this kind already exist in some parts of the country. I know that in Regina a citizen was fined just last week for cutting across a crossing at a time when the automatic flashing light was on.

Mr. CAVERS: That was a municipal by-law—

Mr. MACDOUGALL: In some cities it is true but it is not so in general application. In putting forward this suggestion it should be noted that section 416 as it exists today provides for a penalty of \$10 for a person who uses a highway crossing where there is an existing overpass built for his protection. It is not different to provide a \$25 fine for a person ignoring the warning signal.

Hon. Mr. MARLER: I was not suggesting, Mr. Macdougall, that your recommendation was not a perfectly common sense one and that it should not be made a part of the Act, but I was merely saying to the committee that the suggestion had been made to the Board which had given rather mature consideration to it, and they considered it was a point that should be dealt with as part of the highway legislation rather than as an amendment to the Railway Act.

Mr. BARNETT: I wonder if I might return for a moment to the other proposal which you submitted. The minister in his comment upon the matter of the closing of crossings referred entirely to the situation lying within the municipal boundaries and made no reference to what the situation is in respect to the closing of crossings in unorganized territory.

Hon. Mr. MARLER: Quite frankly I was not endeavouring to draw a distinction between what you might look at as crossings within municipalities and other crossings. I do not think there is any distinction between the two in the Act, and there was certainly none in my mind when I made those remarks.

Mr. BARNETT: You did suggest the initiative could properly lie with the municipal authorities. Now, in the absence of a municipality, where would the initiative lie?

Hon. Mr. MARLER: I was not suggesting that the initiative should lie with the municipality. I thought that the concurrence of the municipality should still remain a condition; in other words, if the application were made by a railway asking that some crossing be closed, that the board would notify the municipality concerned or the county corporation concerned, or the province concerned, and say that this proposal had been made. As I understand the Act at present, unless the concurrence of the municipality, the county corporation, or the province is obtained, it is not now possible to order the closing.

Mr. SMALL: Who is suggested to lay the information?

Mr. MACDOUGALL: It could be laid by anyone in the ordinary manner.

Mr. SMALL: I am in accord that there should be some kind of inter-provincial arrangement to have all signals adapted to uniform standards to bring about proper enforcement.

Mr. ELLIS: Has the railroad company approached the provincial highway authorities and municipal governments to sell them on the idea of enacting by-laws to cover such offences?

Mr. MACDOUGALL: I think I can say no. It is our feeling that a provision of this kind dealing with public highway crossings would well lie within the Railway Act, and if it should be found that it does not, perhaps other means could be taken to meet the objective. But we felt that was the proper place to put it. That is why we came forward with it at this time.

Mr. HOSKING: What is the position when an accident does take place, and when someone ignores the warning sign? Suppose someone ignores a flashing light and goes across, and his car gets smashed and he is killed. What is the responsibility when the judgment is given? How do they come out?

Mr. MACDOUGALL: It is rather difficult to answer the question as you have framed it. It depends entirely on the facts of each individual accident who is civilly liable, where the civil liability would lie, or where the damages would lie. They may lie with the person using the highway or with the railway company. We have statutory obligations such as blowing the whistle and things of that kind. It may well be found by the court that that was the cause of the accident. It depends on each individual case.

Mr. HOSKING: Does the railway generally suffer if a person, in the face of a wigwag goes on the track and is killed? Would the railway be sued for damages?

Mr. MACDOUGALL: We are sued many times for damages and we often have considerable damage occurring to our equipment which is not recoverable from anybody using the highway. That damage may run into many thousands of dollars when cars get on the railway; and when an automobile gets under a locomotive, there are not too many of us who are insured or who have financial resources to stand a claim of that kind.

Mr. HOSKING: My point was that I do not think there is anything more damaging to our country than putting laws on the statute books which are enforced only 50 per cent of the time. I think that is the worst thing you can do, to let the public feel that it is all right to break a law as long as you can get away with it. If the railway is suffering unjustly because of the accidents which happen when people disregard warning signs, they do not get the protection they should get, and I would be inclined to go along with you; otherwise, unless you are going to stop every single person and fine him, if he does not observe the law, then I do not think you should put the law in, because you are training people—we have done it not only here but everywhere—to disregard the laws of the country unless they are caught. That is the only crime, and I think it is a very bad thing. If you had anybody to police it, you might put it on the statute book and go ahead with it, but unless five or six per cent of the people are caught, they would have an utter disregard of it.

Mr. MACDOUGALL: We appreciate very much that there is a problem of enforcement but we do not feel that because it is difficult we should throw up our hands and do nothing about it. We have many cases, where, if this law was on the statute books we could take effective prosecution against the parties who ignored the signals. This has nothing to do, I might say, with the recovery of damages on a claim. That is purely a civil matter depending on the negligence of the parties. This is entirely directed toward penalizing offenders, the people who ignore crossing signals; and in the event that publicity is given to it, it would teach people that they must abide by those signals as they do ordinary traffic signals, and not ignore them. We have that realistic approach to it, and we think that with clear legislation and enforcement by our own police as well as by provincial and municipal police and others interested, we could achieve a considerable amount of success.

Mr. HOSKING: The reason I mentioned it was to find out how much money you could afford to spend to police it. If your damages are heavy in those accidents, you might say that we will spend \$100 thousand to punish every person who goes across these crossings who should not go across them. It would be cheaper than paying for the damages to our equipment. I was trying to get some connection between the two. It is just useless to put in any law unless you are going to enforce it.

Mr. MACDOUGALL: We would make a strong effort ourselves and also try and interest others to police it. If it was enacted and enforced over the years, it would create an awareness of those signals which would cut down not only our expense, but death and injury to people at highway crossings, because not only is the person in the vehicle subject to death and injury, but many times the people in the railway train itself are subject to death and possible injury such as when the engineer of the railway train applies his brakes to try and avoid an accident. In such cases people are often thrown out of their seats and injured. When a train is derailed serious consequences can occur to the

passengers. So it is our feeling that in the long run not only would our costs be cut down, which is a small part of it, but the larger object would be achieved namely, reducing the number of injuries and deaths at crossings. That is the purpose of it.

Mr. NICHOLSON: I believe that in Saskatchewan on the main line of the Canadian Pacific and the Canadian National where a highway crosses the railway, we have special stop signs which require cars to stop. As I understand it there is a \$50 fine for anyone who drives through; and I believe that in other places in the province where people have been killed at railroad crossings there is a stop sign put up afterwards. There seems to me to be a great deal of merit in having it in the legislation proposed so that in all the provinces there would be a penalty if people and traffic failed to recognize and to stop at those signs. I think there should be some value; \$25 seems to be a very reasonable amount; but it seems to me that if we had a few people paying these fines, eventually we would learn to recognize the stop signs; and with the "Canadian" and the "Supercontinental" going across our country at more than a mile a minute, I think it is very important that these stop signs should be recognized before people proceed to go across. I wish we could include that 259 as a proposed amendment in section 416.

Mr. CAVERS: Wouldn't that create an overlapping of legislation? In Saskatchewan they have a provincial statute governing it now.

Mr. NICHOLSON: I think that the province would be well able to repeal their Act if there was dominion wide legislation. I think it is desirable that people travelling in cars should observe the same rules in Manitoba that they do in Saskatchewan or Alberta. Certainly with this increased speed on the main lines of the Canadian Pacific and the Canadian National there is going to be a stepping up of danger to people proceeding to cross them.

Mr. GREEN: May I ask Mr. Macdougall what special statute there is in provincial legislation dealing with this at the present time?

Mr. MACDOUGALL: To my knowledge the provincial legislation only deals with careless or reckless driving.

Mr. GREEN: Do you know of any provincial legislation which deals with this proposed offence?

Mr. MACDOUGALL: Not to my knowledge.

Mr. GREEN: You are only saying that it applies in cases where the board has actually issued an order that there be a protective device installed?

Mr. MACDOUGALL: That is right.

Mr. GREEN: Then there will be money spent by the railway and perhaps by the provinces or the municipalities, to protect the public.

Mr. MACDOUGALL: Yes; these would be warning devices erected under order of the board and to which contribution would be made by the railways and the municipalities.

Mr. GREEN: You are saying that it should be made an offence where a person disregards signs, signals, or other protective devices which are ordered to be installed by the board?

Mr. MACDOUGALL: That is right.

Mr. GREEN: I think that a suggestion such as this might be given some further thought by the minister. After all the whole purpose of this Grade Crossing Fund is to save life and to prevent these accidents. Apparently there is no provincial statute which actually deals with this particular offence. It is because of travellers disregarding signs which have been ordered, or disregarding warning devices which have been ordered to be erected by the board, that

the railway has had to go to the expense of erecting these devices, and the municipalities have had to pay some of the costs. Surely there is nothing wrong in making it an offence for a person to disregard those signs. It seems to me there should be a further look taken at this recommendation before the bill goes through the House. It would not have to be added here in the committee, but it looks to me like a very reasonable suggestion made by a thoroughly responsible organization.

Mr. HOSKING: If this is going to be enforced—

Mr. GREEN: The responsibility to enforce it would rest not only on the railway but on the authorities across the country. The point which Mr. Nicholson brought out was that we now have these very fast trains running across the country. Therefore, accidents at crossings are going to increase. It just does not add up in any other way. This would seem to be a very appropriate time to give the public warning that they must pay attention to them.

Mr. LEBOE: In connection with municipal legislation, would there be any admission of financial liability which would cause them not to enter into this field at this moment or at this particular time? Would there be an admission of financial responsibility by any act of the provincial government which it might make in respect to this?

Mr. MACDOUGALL: I do not see how that could arise.

Mr. LEBOE: Then why have they dodged the issue so long, if it was necessary?

Mr. MACDOUGALL: I do not know.

Mr. HODGSON: As far as the highways are concerned, should not the railway companies or the Board of Transport Commissioners pay for the putting up of the signs themselves?

Mr. MACDOUGALL: Those are signs and signal devices ordered by the board, such as flashing lights and so on.

Mr. NICHOLSON: Would a stop sign be considered one of the signs? Some of the highways just have ordinary crosses on them. But suppose there is a stop sign? In Saskatchewan at any place where a stop sign has been erected, when you come to it you must stop otherwise you are liable to a fine imposed by provincial legislation.

Mr. MACDOUGALL: That is right.

Mr. NICHOLSON: Would that sort of sign be considered as one dealt with in the Act?

Mr. MACDOUGALL: If it was ordered put up, it would be the same type of sign.

Mr. CARRICK: I was thinking of the Ontario Highway Traffic Act and the section dealing with careless driving. Do you not think that if a person drove on a railway track in disregard of the signs, and had an accident he could be convicted of careless driving?

Mr. MACDOUGALL: Oh yes; but the practical application is that hardly anybody is ever charged and convicted under it. Those who are charged are not convicted. Our experience has been that it does not work. That is why we make this proposal.

Mr. WESELAKE: Do you not think that in view of the fact that most motor vehicle operators make a very good study of the Highway Traffic Act, that a provincial Act would be far more effective than to place this material in the Railway Act?

Mr. MACDOUGALL: I do not know. I think it would be obvious that if publicity were given to the offenders that people would pay attention to them. I do not think it would take long for people to find it out.

Mr. JAMES: Has your company any plan to undertake—should this section be included—to publicize it right across Canada so that people would be well acquainted with it before it was put into effect?

Mr. MACDOUGALL: I do not think we have any existing plans, but we could be in favour of it being widely publicized when it is enacted, and we would be only too happy to join in that publicizing.

Mr. HOSKING: I would be very sympathetic to this if there could only be some assurance given that it was going to be enforced. But when our government passes a law such as this and it is left up to municipalities and provinces to be enforced, I can see a very haphazard arrangement in doing so. The reason I am interested in it is that I happened to be on a train a little over a month ago going west from Toronto to Stratford when there was a fatality. I was riding in the first coach behind the baggage car. The wigwag was going. The fellow drove right past another truck in order to get on the track against that wigwag. I saw the engineer as soon as the train had stopped. The position of the engineer and the fireman on that train was intolerable. They could see this chap was going to get right in front of their train and they knew there was going to be a very serious accident. I do not think it is fair to subject employees to that kind of treatment. There was nothing he could do. He was stopping before the accident happened because he had the emergency brakes on before the train hit the car. He realized it was going to happen. I would be very sympathetic to it if I could see some way of enforcing it, but if you cannot persuade the province to do it now, how are you going to persuade them to enforce it?

Mr. MACDOUGALL: We made no effort to persuade the province to enact the legislation because we felt that this problem should be dealt with under the Railway Act. We felt that since this problem was not being dealt with satisfactorily by existing legislation, and because it could fit into the general framework of the Railway Act, our first efforts should be to put it where it ought to be in: in the Railway Act, as part of section 416 which deals with penalties for those who cross on the level where a foot bridge has been build for them. We have made efforts in the past, and in every case our efforts have been fruitless. We have not sat back and done nothing about it, but it has not been possible to achieve very much under provincial legislation. However, if this legislation were enacted, our company would be most active to make sure that it was publicized and made as effective, as it possibly could be because I think we have a good piece of legislation which will work.

Mr. ELLIS: The companies have certainly given this consideration. If this amendment were accepted would there be any difficulty as between the powers now possessed by the provinces and the municipalities? In other words, I am looking at it from the constitutional angle. Would this legislation be challenged on the grounds that it is an infringement on the rights of the provinces and municipalities? -

Mr. MACDOUGALL: I can only give you my view and my view is that it is perfectly within the competence of the government to enact. I think they had power to enact 416 which exists and this is the same thing.

Mr. ELLIS: You are a representative of the C.N.R. Have you talked to any people of the C.P.R. in reference to this?

Mr. MACDOUGALL: Not in any great detail, although generally the C.P.R. give their support to this proposal.

Mr. SPENCE: Very definitely.

Mr. CARRICK: I think you will agree with me that this is properly a matter of property and civil rights, a matter of highway legislation with which we have been dealing.

Mr. MACDOUGALL: No sir. I think it is a matter of safety of the public at a highway grade crossing, the same as the present section 416.

Hon. M. MARLER: Is there really not a marked difference between legislation which deals with what an individual may do at a railway crossing and something an individual may do when he is in a motor vehicle which has pretty well been looked on as a provincial matter. I am not saying it is a provincial matter to regulate the amount of alcohol a person may consume when driving a car, but my inclination is, and I think it must be that which persuaded the Board of Transport Commissioners to make no recommendation for the adoption of the penalty you suggest, that I think that they regard this as a matter of highway legislation rather than as a matter of the conduct of individuals which is what section 416 does at the present time.

Mr. MACDOUGALL: Yes, I think that must have been the thinking of the board.

Hon. Mr. MARLER: Also I think, Mr. Chairman, we are probably all of us somewhat attracted by the idea of having a piece of legislation which is universal for ten provinces of Canada, but I do not know that we should, merely because it is attractive, say it is not a matter for the provincial legislatures. I think if we allowed ourselves to be persuaded by the fact of convenience into setting up the legislation we would adopt lots of legislation which is strictly of a provincial character.

Mr. MACDOUGALL: It is the view of our legal officers that this legislation is within the competence of the parliament. We feel the jurisdiction is there and otherwise we would not have proposed it.

Mr. CAVERS: Do you not think that the Railway Act confines itself pretty well to conduct of people on railway trains and terminals and rights of way of railways and that this is entirely different in that here someone is using a highway to cross a railway right of way. It comes under the jurisdiction of the Highway Traffic Act rather than railway legislation.

Mr. MACDOUGALL: I think it fits in probably into railway legislation because it deals with safety of traffic at the railway crossing which is the basic responsibility of the board. If the board has power to install gates and has the power to regulate the traffic on the highway it seems an anomaly that there is no power on their part to say they can enforce the public to abide by these rules. When they are looking after the safety of the people on the trains, and highway, on foot or in vehicles, and have the power to put up these protective devices and control traffic on the highway, it seems an anomaly they have no power to say you must abide by these things.

Mr. LEBOE: If we put this through parliament who is going to enforce the Act?

Mr. MACDOUGALL: The same people who enforce the present section 416, or any other penalty provision in the Act.

Mr. ELLIS: Mr. Macdougall, I have also seen people duck under gates to get across three or four tracks and nobody there has authority unless the provincial police lay a charge. Could your man operating the gates have the authority?

Mr. CARRICK: I think it could be done in Ontario. It is competent for the legislature to legislate to cover this situation as they have done under the careless driving section. That is constitutional legislation. That may be and that being so if legislation were enacted by the dominion dealing as you suggest here that would prevail and now if a charge were brought under the Highway Traffic Act of Ontario for careless driving based on these facts it would be held that would be unconstitutional legislation because it would be superseded by the dominion legislation. What would you think of creating

a situation in which you carve a piece out of what was otherwise provincial jurisdiction? Would it not be better to approach it in such a way as to allow the province to handle it and have it done without creating the difficulty I described?

Mr. MACDOUGALL: You appreciate the difficulty in getting every province to enact the same legislation. If we felt that the matter lay rightly within the provincial jurisdiction we would not be proposing it be put in this Act. We feel the circumstances are such that we think this is a proper function of the federal authorities and that when circumstances occur at highway grade crossings that there is a difference there between an accident which occurs on a highway. You read a lot about highway accidents occurring on the highways themselves as apart from accidents which occur at an actual grade crossing. When they occur at a railway grade crossing we think that the complete authority should be in the Board to deal with the whole question of safety and enforcement.

Mr. CARRICK: I am wondering why you do not get convictions now under the careless driving section and why you would be sanguine about getting it under this section?

Mr. MACDOUGALL: I know from the surveys we made of the provinces that we are not getting convictions now. They have tried and had no success.

Mr. HOSKING: Mr. Chairman, could I ask a question of the legal representative of the Board of Transport Commissioners. Why have you not asked for this type of legislation or power when you see the interest of all the members of the committee?

Mr. KERR: I have no instructions from the board to express any views in that respect, but I would draw your attention to the top of page 69 of the board's report—the bottom of page 68 and the top of page 69. I will read one sentence:

Other suggestions, more closely allied to motor vehicle operation, including those of an educational nature respecting public observance of grade crossing signs and protective devices, compulsory speed reduction and compulsory stopping of vehicles under certain conditions, and the strict enforcement of prescribed highway safety regulations were placed before us.

I assume that the conditions which Mr. Macdougall has referred to may be embraced in that phrase and the strict enforcement of prescribed safety regulations were placed before us. The board says:

These are matters not within the jurisdiction of the board but, nevertheless, they are of interest to the board and might usefully meet with the attention of the provincial committees herein elsewhere suggested, as they constitute a part of the overall problem of highway accidents concerning which there is a rapidly mounting national awareness.

Beyond that, I have no instructions from the board.

Mr. HOSKING: I can understand when you control speeds then they are beyond the limits of the railway, but when you come right on to the railway right of way which is not part of the highway—the highway may cross it but it is the railway right of way—you have a flashing light there which says "Stop". Do you not feel that you can legally make a case that you can say, when that stop sign is there and the red light flashing, it says "stop" and that is the railway right of way and that means that you should not be on it?

Mr. KERR: I do not know. As a lawyer I have never given consideration to that particular problem.

Mr. HOSKING: Have the railways never approached the Board of Transport Commissioners about this?

Mr. KERR: Certainly I have not been consulted about it.

Mr. HARRISON: May I ask a question. I am not sure about the proposed amendment to 416. It has occurred to me that the proposed amendment here might have the effect of giving priority to railway traffic over any highway traffic it might come in contact with and having regard to the situation in my own riding where there are none of these automatic signals in the riding whatsoever, I do not think there is even a stop sign as my honourable friend mentioned. They might be put up of course at all crossings. Would this not have the effect if there was an accident at one of these crossings that the road traffic would be automatically in breach of the law and subject to a \$25 fine possibly on top of being killed as well?

Mr. MACDOUGALL: From the point of view of the question of right of way a train has the right of way. This section is designed to educate the people to regard the signal. I think you will appreciate that a locomotive engineer at night driving a locomotive seeing a car approaching with lights coming up to the crossing at a very great rate of speed not knowing whether that motorist has been the train and is going to stop, has his heart in his mouth every time he sees it and it creates a very undesirable set of circumstances. We feel that will create a circumstance where people will learn to obey signals as they do traffic lights. I know we approach traffic signal lights today pretty well with impunity.

Mr. HARRISON: That leads me to another question which may not be relevant. As I mentioned before it would be possible to put up these signs at all crossings and some of these may not be quite realistic because I have one line in my own riding where the train only operates once every four weeks and would not be very good to have traffic stop for that line every time traffic came along.

Mr. MACDOUGALL: I think the section specifies that the penalty will be imposed where a person crossing a road disregards the signs or signals and in the circumstances which you suggest I doubt if the board would exercise its authority and put up the stop signs. They would only do so in cases where they felt it was a most effective way to protect the public.

Mr. HARRISON: Otherwise if the board so authorized at that crossing if there was an accident there highway traffic would be automatically in the wrong and would not be in the position it is now of going before a court and having the case decided on its merits.

Mr. MACDOUGALL: If the sign was there they would be automatically wrong if they did not stop.

Mr. NICHOLSON: I was wrong when I stated there was a \$50 penalty in Saskatchewan. I see:

The minister may by order declare any level crossing of a public highway over a railway, outside a city or town, to be a dangerous railway crossing, and he shall, in such case, if the crossing is on a provincial highway, cause suitable signs indicating danger, or stop signs, to be erected or placed on the approaches thereto.

But apparently there are not any penalties attached if you drive through. It would appear to me that the request being made now that there be a \$25 penalty would be desirable. I do not know why Saskatchewan did not include a penalty.

Mr. ELLIS: I feel that the case merits support but it brings me back to the question I raised earlier when I asked if the railway company had approached the various provincial governments to encourage them to pass legislation covering this point. There is no question about the province having the right to pass legislation of this type because in my own province, as the member for McKenzie pointed out, the government may direct that a stop sign be placed on a particular highway. My understanding is that trucks must stop while cars may go across a crossing on which a stop sign is erected; it is an offence for trucks because I know a truck driver who has been fined. There is no doubt that the province has the right to enact legislation of this kind. There has been some doubt raised here and I asked the question whether there would be any conflict or difficulty in enforcing the legislation if this was included. Mr. Macdougall assured me in his opinion the Railway Act is the proper place, but there have been other opinions expressed this afternoon. Therefore, while I am very desirous of seeing this type of provision included in the legislation I am wondering whether the best way would not be for the railway company to approach each of the provinces and state their case as they have this afternoon and try to get the various provincial governments to place in their law provisions to cover the very objections which are raised here.

Mr. MACDOUGALL: If we felt that the proper way to put forward this suggestion was to approach the provincial government we would of course take that action. I wonder if it is within the competence of a provincial government to provide penalties for failure to obey the orders of the Board of Transport Commissioners. These signs are put in by the Board of Transport Commissioners and we would be asking the provincial government to obey signals erected under the competence of the Board of Transport Commissioners. They certainly have jurisdiction, as it is suggested, to provide a fine with respect to ignoring a crossing sign put up in accordance with provincial law, but I do not know if we could ask them to obey regulations of the Board of Transport Commissioners. That is why we are here. The Board of Transport Commissioners should also have the power to enforce the legislation.

Mr. ELLIS: Apparently the city of Regina has the right to enforce a by-law of this type because as I mentioned earlier, a citizen of Regina was fined in a police court last week for the specific offence of proceeding across a street crossing at a time when the automatic flashing light was on, and that was the specific offence with which he was charged and for which he was fined.

Mr. MACDOUGALL: Was that under the provisions of the Highway Traffic Act?

Mr. ELLIS: I could not say.

Mr. SPENCE: I wonder if I could refer to a question asked a few minutes ago by Mr. Carrick as to how this section would be enforced if we had not been able to enforce a charge of reckless driving. I would just like to point out that there is considerable difference in the kind of proof involved. When a man drives against a flashing light and is charged with careless driving, the magistrate may say, "Well, the train was some distance away, that is not careless driving. Obviously he got across and was safe, so I will not convict him." However if the charge is that he did at such and such a time on such and such a day proceed across the crossing against an operating railway signal, contrary to the provisions of section 416, it is just a matter of fact whether or not he did, and if he is found to have done that he would be automatically convicted. There is that superior ease of proving the case under the legislation that is proposed.

The CHAIRMAN: Mr. Munnoch of the Bell Telephone Company.

Mr. MUNNOCH (*General Counsel, Bell Telephone Company*): My name is Norman Munnoch, and I represent the Bell Telephone Company of Canada—

Mr. GREEN: May I ask one question of Mr. Macdougall before Mr. Munnoch proceeds?

The CHAIRMAN: Yes.

Mr. GREEN: You have heard the suggestion made by Mr. Spence with regard to recommendation number 4 to the effect that contributions should be permitted towards the annual cost of maintenance and operation of automatic signals installed at crossings after the amendment comes into force, the contribution in respect of any one crossing not to exceed for any year the actual cost for that year nor to exceed \$200. What is the position of the Canadian National with regard to that?

Mr. MACDOUGALL: The position of the Canadian National is that at the hearing of the board dealing with the problem we also proposed to the board that there should be some easing of the provision with respect to the annual maintenance of protective devices. We stated before the board that some contribution should be made towards the cost from the Railway Grade Crossing Fund. I have no specific instructions to deal with that today, but that was our position at that time.

Mr. MUNNOCH: As I mentioned, my name is Norman Munnoch, and I represent the Bell Telephone Company of Canada. I would like to thank you, Mr. Chairman, and honourable members of this committee, for the privilege of appearing before you and I would like to take advantage of that privilege in order to place before you the grievance of The Bell Telephone Company of Canada, and I think I might say, of the public utilities companies generally, against what they feel to be the unfair and unjust treatment they receive under the Railway Act and its application to the utility companies in the matter of the apportionment of costs of works at highway railway crossings for the safety, protection and convenience of the public.

I shall also endeavour to demonstrate how this bill that is now before you will greatly worsen the position of the utility companies and the grievance that they feel they suffer, unless it is guarded against by the addition of a provision which I will take the liberty of submitting to you for consideration after I have explained my point.

Now, many years ago—I think it was about 1914—the then Board of Railway Commissioners for Canada, now the Board of Transport Commissioners for Canada, in dealing with one of these apportionment of cost matters, decided that the utility companies must move their facilities at their own cost, and bear 100 per cent of that cost. That decision was made and has been followed through a long line of decisions notwithstanding the fact that the board in many cases—and in fact in all cases that I know of—has found that the utility companies neither cause nor contribute to the danger at the crossing which is sought to be eliminated by the works, nor do they receive any benefit or advantage from the construction of those protection works.

No other party involved in the cost of grade separation works is accorded such unfair treatment as is meted out to the utility companies. I think it is evident from the board's report—and I do not want to overstate this point—that the board found that the railways in part cause or contribute to the danger. They also found that the traffic on the highway caused or contributed to the danger. That means the responsibility of the municipality having jurisdiction over the road or highway is involved. In the distribution or apportionment of the cost the railways and the municipalities—that is, the parties who are responsible for the condition to be remedied and who derive full benefit from

having the situation remedied—are relieved of a substantial part of the costs of adjusting their properties or works in order to bring about the protection that has to be provided at the crossing. The utilities however are always ordered to pay 100 per cent of their costs. You find that situation appearing in many of the judgments of the board. By the same judgment which relieves the railway or the municipality—sometimes in whole and sometimes in part—of the burden of their cost, the utility companies are ordered to bear the whole of their costs.

In the earlier cases when the rule was established and applied the amounts with which the utility companies were concerned were small. Most of the cases involved aerial lines, and it did not cost a great deal to move them. In each case in which the utility companies were involved, they opposed the application of this rule of the board. We find in schedule 5 of the board's report that the railways have paid on an average 35·37 per cent of these costs, and in schedule 7 covering the period from 1941 to 1953 the railways paid about 23·2 per cent of the cost. I do not wish to mislead anyone. These are the costs of the whole project, exclusive of what it cost the utilities, but I think that the major costs—and my friends representing the Railways here will be able to correct me—in these construction works; particularly where you have a grade separation it is the cost of adjusting the railway track and lines, the building of the steel bridge and the abutment and that sort of thing that involves the greater part of the total cost. Therefore, I think I can fairly say that the railways with the contribution they received from the Grade Crossing Fund and the contribution from the municipalities very often find that they do not have to pay an amount equivalent to the cost of removing or adjusting their own facilities to provide for the protection.

In recent years this matter, as far as the public utilities are concerned, has become vastly more important. More and more of the utility companies' facilities have been placed underground, and the costs that the utility companies have to pay at these crossings has been vastly increased. In a recent case at Dufferin street in Toronto, the Bell Telephone Company's costs amounted to \$84,800 for this one crossing.

When the matter was being considered by the Board of Transport Commissioners for Canada preparatory to making its report, the Bell Telephone Company made a survey of the crossings at which it had facilities. We could not foresee, of course, what sort of protection would be ordered, but we found that we had lines across some 3,780 crossings in Ontario and Quebec—that is, level crossings. Our engineers using what judgment they could and assuming that there would be a grade separation ordered at each, estimated that if all those crossings were protected by grade separation, it might easily cost the Bell Telephone Company in the future an aggregate amount of some \$12,400,000.

In 1932, when there was a considerable amount of grade separation work being ordered, a number of the utility companies strenuously opposed, before the board, the application of this rule that it had laid down for fixing the utility companies with their full costs of moving or adjusting their facilities. The board being faced with a number of cases in which this issue was raised, decided to hold a special hearing to deal solely with the question of whether or not the utility companies were being fairly treated under the board's practice. In its judgment of that case the full board as then constituted in a very strongly worded judgment decided that under the general principles of law the utility companies ought to be compensated for the removal and adjustment of their facilities, but the board then went on to say this—and if I may take the liberty of doing so, I will read the last paragraph of their judgment. They said:

If the matter were *res integra* I would have no hesitation in holding that the companies should be compensated. The fact is, however, that the Board has held in numerous cases during the past twenty

years that the companies should move their utilities at their own expense. I have no doubt that many of the subways recently completed, or now in the course of construction, have been started relying to some extent on the board's adherence to this ruling. The matter after all is not one of law but of a reasonable exercise of discretion and under the circumstances I feel that I should follow the practice so long established.

In other words, the board said that if you considered this question from the point of view of the general law, the utilities should be compensated—but they refused them compensation. Now, the board misguided itself in this particular judgment, and in the passage which I read. They said—"If the matter were *res integra*"—but all matters before the board are necessarily "*res integra*" particularly where it is a matter of fact as these questions are. These cases involve questions of fact and the Supreme Court has so held. Section 52 of the Railway Act says that the board may re-hear and re-examine any case that comes before it.

Therefore, although, the board by its own judgment in the 1932 case found that its rule was unjustifiable in law. In every subsequent case in which the utility companies have been involved where the railway crossing protection was ordered or permitted by the board for the safety, protection and convenience of the public, the board has adhered to its rule and has ordered the utility companies to bear the full cost of removing and relocating their facilities. However, the railway company which in part caused and contributed to the danger was let off with paying only a portion of the cost of moving and adjusting its facilities.

Now, the Supreme Court of Canada has held that the removal and relocation of the facilities of the utility companies is just as much a part of the work as, for example, is the removal of the earth out of the subway in order to make an underpass, yet the board has never in any case allowed the utilities any assistance from the Grade Crossing Fund. As I understand it, all of that money went to the relief of the railways and the municipalities.

The rule which the board has adopted and to which it adheres and applies in all these cases, in our submission, discriminates against the utility companies. It applies that rule to the utility companies alone. I can cite to you decisions of the board where others than utility companies—and I exclude the railways for this purpose—have had works at the site of some of these crossings, but because they were not a utility company they were relieved of paying the cost of moving their own facilities or of any other contribution.

As I have mentioned, the railways who are to a major degree responsible for the situation at the crossings and who cause the danger and benefit from its removal and from the works there, are not required to pay all the cost of moving their facilities. You will find in the very same judgments that the railways and municipalities are treated on one basis and under one set of principles which are of perhaps of reasonable fairness, but the utility companies in the very same judgments before the same court and at the same time, receive a different treatment which is very adverse and which is, in our submission, unjust.

If all the parties, that is the railways, the municipalities and the utility companies were ordered to move their own facilities or adjust them to make way for the new protection works that have to be put there at their own cost, it might not be too unfair for all would be treated equally. But that is not the situation.

The railways and the municipalities derive the benefit of the moneys from the works, and the utility companies who have to incur costs for the very same reasons—that is, the safety, protection and convenience of the

public—are left to bear their own burden. In our view and submission that is an injustice and it springs from the practice of the Board in adhering to this rule which it has laid down for its own guidance—that the utility companies who neither cause nor contribute to the danger, and who do not benefit in any way from the work, have to pay their own expenses whereas the railways and the municipalities who bring about this danger through using the highway crossing get off with only a portion of their costs.

Now let me point this out: what happens, as it sometimes does, where the province contributes to these works? The utility companies under the board's ruling contribute four times. They pay taxes to the federal government, some of which must find its way into the vote of parliament to the Grade Crossing Fund. They pay taxes to the province, and if the province makes a contribution, then some of those taxes must find their way into the provincial contribution. They pay taxes to the municipality, and if the municipality makes a contribution, then some of those taxes must find their way into the municipality's contribution; and in addition the utility companies are asked under the board's practice to make a further contribution running in thousands of dollars. Of course the amount of the utility companies costs depends on the equipment that is there. It may be 30, 40, and recently 80 thousand for one crossing.

The utility companies have sought relief by appeal to the Judicial Committee of the Privy Council and to the Supreme Court of Canada. But these courts, and I particularly refer to the judgments of the Supreme Court of Canada, have held that the board was the final arbiter of the order making an apportionment of costs; and its judgment goes on to point out that there is nothing in the Railway Act to direct the board how it should exercise its discretion in apportioning the costs; that the Board is not bound by the ordinary principles of law which would govern a court in dealing with the same subject matter. So in this field, under the Railway Act, as it now stands and under the authority of the judgment of the Supreme Court of Canada, the board has an absolute discretion not controlled by the general principles of law which govern the administration of justice in Canada.

In cases where the cost of moving utility plant and facilities have come before the civil courts, which are bound by the principles of law, these courts have awarded to the utility companies their costs. This usually was in a contest between the utility and the municipality.

This is a very complicated subject, and it involves a multitude of judgments and many sections of the Railway Act. I have endeavored briefly to outline the adverse position under which the utility companies have been placed under the Railway Act as it now is, and under the board's application of that Act in cases in which utility companies are concerned. This, in our respectful submission, is unjust and unfair.

As I have said, we contribute through taxes; and the Bell Telephone Company pays some pretty heavy taxes; moreover, we contribute through federal, provincial, and municipal government contributions, and our submission is that the utility companies which neither cause nor contribute to the danger sought to be eliminated by these crossings, and who, as utility companies, derive no benefits from these works, should not have to pay any more than any other ordinary citizen should pay, and that is what they contribute indirectly through taxes which they pay to governmental authorities.

Now, this bill which is before you, sirs, Bill 259, will greatly magnify the increased burden which is thrown on the utility companies if the Board of Transport Commissioners adheres to its practice of the past.

Under this bill the board becomes empowered to make contributions out of the Grade Crossing Fund in cases where it cannot do so under the present Act. An example of that is crossings constructed after May, 1909. I suggest in view of the terms of section 263 of the Act, that if this bill should pass, and if crossings constructed after 1909 require any further protection in the public interest, then that is now the responsibility of the railways. This bill will relieve the railways of that responsibility and pass part of the burden of discharging it over the utility companies.

I cannot find in the board's report any information about how many miles of railway were constructed since May, 1909. However, the Canada Year Books for 1941 and 1954 show that there were 24,104 single track miles of railway in operation in Canada at June 30, 1909, and 42,953 single track miles of railway in operation in Canada as at December 31, 1952,—an increase of 18,849 miles, or 78 per cent.

From these figures it will be apparent that a great number of crossings must have been constructed since 1909. But now that these can be assisted out of the Grade Crossing Fund, and dealt with as works for the protection, safety and convenience of the public, the utility companies will suffer an increased burden of costs for the protection of these crossings.

The second additional circumstance under which contributions can be made out of the Grade Crossing Fund under this Bill is for the reconstruction and improvement of grade separation now in existence but which are not adequate.

The third is for highway projects which involve the construction of grade separations.

So that the utilities will be burdened with the cost of these additional classes of cases which will be advanced because of the contribution which may be made to the costs of these works out of the Grade Crossing Fund. Of course, the bill increases the grant from \$1 million to \$5 million and the contribution for any one crossing from 40 per cent or \$150,000 to 60 per cent or \$300,000. So perhaps it is not unfair to expect that the Grade crossing work will increase approximately five times and no doubt that is what this bill intends.

But the honourable members here will note that under this bill the Board of Transport Commissioners for Canada can only grant moneys out of the fund where the works are for the public protection and convenience of the public and section 265 (a) as set out in the bill provides that the highway projects which it describes shall, if the board so directs be deemed to be a work for the protection, safety and convenience of the public. Therefore, all these works which come within the scope of this bill must be works for the safety, protection and convenience of the public and so they come within the board's rule which I have referred to whereby the utility companies receive the adverse and discriminatory treatment of which I have spoken.

Now, speaking for the Bell Telephone Company—and I am sure the other utilities are in the same position—we are not here to seek any special treatment. What we seek is fair treatment under the law of Canada which speaking broadly provides that no one can be compelled to give up his property except for a public utility and in consideration of a just indemnity previously paid, and that those whose property is injuriously affected by public works are entitled to indemnity and compensation.

Now, I appreciate that bill 529 has been approved in principle by the House of Commons. I do not attack the principle of that bill but I respectfully submit that the situation I have described can be remedied without altering or affecting the principle of this bill. I have taken the liberty of drafting an amendment and I have a few copies which may perhaps be circulated. My suggestion is that an additional section 4 be added to the bill which would read as follows:

Section 39 of said Act is amended by adding the following subsection thereto:

(3) In exercising its powers under subsection 2 of this section 39 and under section 262, the board shall be governed by the same established principles of law and equity as govern the exercise of discretionary powers by the courts, and shall not follow any precedents established by it in respect of the exercise of such powers prior to the enactment of this subsection.

This amendment, will dispose of the board's rule or practice which the board feels itself obliged to follow. In any event I have endeavoured on a multitude of occasions to get the board to depart from it and have not succeeded. The board constantly follows that rule. The amendment will require that the apportionment of the cost be dealt with by the board on its merits and according to the principles of law of equity which govern the courts of Canada in the administration of justice where they have discretionary powers. We object to an arbitrary rule. We find, and I think counsel for the railways here today has told you, sirs, that the board in dealing with grade separation cases tries to deal with the apportionment of the cost on the benefit principle. The benefit principle takes into consideration the railways and the municipalities, but the board in every case has found that the utilities get no benefit. Why not apply the benefit rule or an equitable rule equally and fairly to all parties?

I appreciate the opportunity, sirs, of being here and I am at your service.

Mr. CAVERS: Mr. Chairman, might I ask this question. Mr. Munnoch, the presentation you have made today would apply not only to your own company but to the other type of utilities such as pipelines and gaslines and so on?

Mr. MUNNOCH: Yes, sir.

Mr. CAVERS: Have you any idea how many different utilities would be affected by legislation of this kind?

Mr. MUNNOCH: I am sorry, sir, I do not have that information. There are utility companies no doubt stretching from Newfoundland on the east to British Columbia on the west.

Mr. CAVERS: Then you told us that there was a difference in costs between the aerial lines that are constructed by the Bell Telephone Company and the underground lines. Can you tell us the approximate difference between the cost of changing an aerial line and an underground line?

Mr. MUNNOCH: It is very difficult to say for this reason. You may have the aerial line carrying a heavy load of long distance cable or you may have an aerial line that carries a couple of wires. The underground is different. You have to have the cables in conduits. You cannot take the conduits up once they are put down under the earth and move them to another place. They have to be destroyed. The cables lying in conduits after a period of years tend to flatten out so that they cannot be pulled out and placed somewhere else. With the aerial lines sometimes you can dig a hole beside the pole and take it out and move it to the other hole. Sometimes it has to be taken down. The board's order as to what protection is to be provided determines how the wires or lines shall be adjusted.

Mr. NICHOLSON: Mr. Chairman, may I inquire if the construction job at Dufferin street in Toronto was undertaken at the request of the Board of Transport Commissioners? Did I understand you to say that the Bell Telephone Company did not benefit as a result of this?

Mr. MUNNOCH: No sir, out equipment was under ground.

Mr. NICHOLSON: And you were required—

Mr. MUNNOCH: We were ordered by the board to move our facilities out of the way to make way for the construction of the subway. It was ordered to be done at our own expense and involved a cost of \$84,800.

Mr. JAMES: Mr. Chairman, I wonder if we might hear something from Mr. Kerr on this subject?

Mr. KERR: Mr. Chairman, that subject was dealt with by the board, and its conclusions are found at pages 65 and 66 of its report. I do not know whether Mr. Munnoch read in full the statement of the board's principle, although I am sure he stated the substance of it. The principle stated in the board's judgment given in 1937 may indicate quite fully the thinking of the board, and I quote from a judgment given by the board in that year:

The general principle upon which the board has acted for many years may be briefly stated as follows: when an application is made for grade separation by a railway company, or by a municipality, either for the greater convenience or facility of the applicant in the movement of traffic or for the re-arrangement of streets and which may ultimately result in affording greater protection and safety to the public who use the crossing, the board deems that the matter of greater conveniences or improved facility to the applicant constitute the main purpose of the application, and that improved crossing protection is merely incidental to the main purpose. In such cases where the removal of the plant and equipment of utility companies is ordered, the cost of such removal is placed upon the applicant, that is, the municipality or the railroad. Upon the other hand, where the paramount reason for grade separation appears to be the protection, safety and convenience of the public in the use of the crossing, and where the removal of the plant and equipment of utility companies becomes necessary, the Board has decided in many cases that under such circumstances the cost of removal and erection of equipment should be borne by the utility companies. While it is true that utility companies neither create nor aggravate the danger at grade crossings, nor do they benefit from grade separation, the Board has always considered that where the project is in reality *pro bono publico*,—that is, for the public good—utility companies should bear the expense of moving their plant and equipment for the free use of streets enjoyed by them.

That is the end of the quotation. Then the board went on to summarize the submission which was made during the grade crossing inquiry by the Bell Telephone Company. Then the board said that the principle which I have read was considered by the Supreme Court of Canada in 1939, and the Supreme Court stated—and I will read only two sentences from that: "The board itself has adopted a principle fully explained in the passages quoted from the judgment of the chief commissioner which it has followed in making orders as to costs where works ordered by the board in connection with highway crossings have involved in their execution the removal of the plants of what are commonly known as public utility companies. It is entirely within the competence of the board to lay down and follow such a rule of practice which, no doubt, it has found to be a just and reasonable rule." That is the end of the quotation from the Supreme Court.

The Bell Telephone also carried an appeal from the board's order to the Supreme Court of Canada which required it to move its plant at its own expense and one of the questions put to the Supreme Court was this: "Had the board jurisdiction to order the utility companies affected to move their facilities at their own expense and without compensation in the circumstances in this case?" The Supreme Court dismissed the appeal of the Bell Telephone Company in that case. The board then said in respect of the Bell Telephone Company's submission: "As the objection is not to the legislation under which the board acts, but to the principle which the board follows, which it may change if it sees fit, the board does not recommend any change in the Railway Act in this connection."

I might say also that in cases such as Mr. Munnoch has mentioned where for instance you have the Bell Telephone Company at a crossing, you also have two other interested parties and probably more, but certainly these two, the railway company and the municipality, or the highway authority. Therefore, if you take the cost which the utility presently bears, you have to place it on one or both of the other parties. I am only indicating what the board's principle has been, and I do not presume to speak for all of the many municipalities which would be affected by a change in this principle. The case was argued, as Mr. Munnoch said, before the board at great length in 1932. Recently I had occasion to glance at the transcript of the evidence and arguments heard at that time and it consisted of 170 pages—there was a lot to be said. I cannot presume to repeat the arguments that were made in the 170 pages. They were very extensive and I can merely indicate what the board found and what the Supreme Court decided—that it was in the board's power to adopt that principle and follow it. The Supreme Court also commented that no doubt the board found it a just and reasonable rule.

The CHAIRMAN: Gentlemen, it is now six o'clock, and I think we can adjourn until 8 o'clock this evening.

Mr. GREEN: We have been getting along very nicely in this committee. It is a standing committee of the House, and I do not think there is any reason why we should be expected to sit three times a day. There is no reason why we cannot continue with this consideration tomorrow. I do agree that in the case of the committee dealing with Canadian National Affairs, for example, there is some excuse for calling three meetings a day, but I think we have dealt with this subject long enough for one day.

The CHAIRMAN: Unfortunately the minister cannot be here tomorrow.

Hon. Mr. MARLER: I am not insisting by any means that the committee sit this evening, but I am sorry to say I have a cabinet meeting in the morning and another engagement in the afternoon which would prevent my attendance.

Mr. GREEN: The bill cannot come up in the House until next week at any rate.

Mr. HOSKING: How inconvenient will it be for the witnesses to come here next week? They are here now, and no doubt they are anxious to get it over with.

Mr. GREEN: Are there any more witnesses?

Mr. HOSKING: Is this all? There is nothing else to do but this?

The CHAIRMAN: Just this.

Mr. HOSKING: It should not take very long.

Mr. GREEN: Perhaps we could sit long enough to deal with this one question and then leave the consideration of the report, or consideration of the bill section by section, until a later date.

Mr. CAVERS: Are there many more questions to be put in connection with this matter? I was going to say if we could facilitate matters by staying for 10 minutes, I will move this amendment that has been made, a vote could be taken on it and we could perhaps dispose of it now if that is all that is holding matters up.

Mr. GREEN: There are very few members here anyway. Would it be agreeable just to finish with this witness and not go on with the consideration of what the committee is going to recommend? If so perhaps it would be all right to continue sitting under those circumstances.

Mr. HOSKING: Is it all right to question the witness now and postpone the next meeting until next week?

Mr. CAVERS: Is it proper that this should be disposed of?

The CHAIRMAN: Whatever you wish gentlemen.

Mr. CAVERS: Shall we deal with it now or later?

Mr. GREEN: Are you finished with the witness?

Mr. SPENCE: Mr. Macdougall and I would like to make a few remarks before we are dismissed. I will not be longer than five minutes.

The CHAIRMAN: Is it the wish of the committee that we sit at 8:00 o'clock tonight. Very well, we are now adjourned until 8:00 o'clock tonight.

EVENING SITTING

THURSDAY, May 5, 1955.

8:00 p.m.

The CHAIRMAN: Gentlemen, I think we have a quorum. Mr. Munnoch would like to make a statement.

Mr. MUNNOCH: Mr. Chairman, I would like the privilege of making a few remarks in reply to what Mr. Kerr the counsel for the Board of Transport Commissioners said just before adjournment. Mr. Kerr was good enough to read from the board's report, which is page 103 of the mimeographed copy which I have. I do not know what page it is at in the printed copy. Mr. Spence was kind enough to let me look at his copy, and it is page 65. Here the board has set forth its own statement of the rule relating to the apportionment of costs where utility companies are concerned.

That rule divides itself into two parts. The first part is where the grade separation or other work is for the greater convenience or facility of the applicant. That would be either a railway or a municipality in the movement of traffic or for the rearrangement of streets which ultimately relates to the protection. The board awards utility companies their costs.

The second part of the rule is that where a work is ordered for the paramount consideration of safety, protection and convenience to the public. Here the utilities are ordered by the board to bear the whole of the cost of moving their facilities.

Now, that seems to me to be a peculiar rule in that in one of the classes of cases, the board recognizes the true legal principle that the utilities should be paid; but in the other class of cases, where the utility will be compelled to pay through federal taxes, municipal taxes, and if the province contributes through provincial taxes, the board by its rule suggests that the utility should pay a third or fourth time. That does not, in my submission, seem reasonable.

Hon. Mr. MARLER: Does not that argument apply also to the railway companies?

Mr. MUNNOCH: True, but the railway gets some of it back through the subsidy.

Hon. Mr. MARLER: What subsidy?

Mr. MUNNOCH: The grant from the Grade Crossing Fund, or the contribution from the municipality; so that this rule fixes the utilities with an extra contribution where they also have to pay through taxes.

Now then, there is another difficulty. Perhaps I might say that there should be an embarrassment to the board arising out of this rule, and it is this: the board is confronted with a grade separation application. If it decides that the work is not for the safety, protection, and convenience of the public, then it has to deprive the railway and the municipalities of whatever contribution it can give them out of the Grade Crossing Fund.

Now, that puts the board in a very difficult position in my submission. It might, on the evidence have some leaning in some cases in favour of the utility, but is it going to deprive the railways and the municipalities of some \$300 thousand contribution just because the telephone company may be fined with \$40 thousand or \$50 thousand? That is the problem which faces the board out of its own rule.

An example of that—I think it is an example—was the Eighteenth Street Crossing Case at New Toronto. That was heard some years ago, in 1937.

In that case the municipality of New Toronto applied to the Board for a grade separation at Eighteenth Street. The matter went before the board for a hearing without any of the utility companies having been notified. The board considered the matter. There was no money in the Grade Crossing Fund, but parliament was making certain grants for unemployment relief which could be used for grade crossing purposes.

The board, without bringing the utilities before it, made an order apportioning the whole of the cost of these works between the railways and certain municipalities. But then, when the railways began to proceed with the work, they discovered that there was a water main belonging to a brick plant at the Ontario Reformatory, and that there were Bell Telephone lines and hydro electric installations at the site of the crossing.

Counsel for the Canadian National Railways applied to the board and asked for an order directing the utilities to move at their own expense. Counsel for the Canadian National Railway's letter to the board said this: "I assume that in accordance with the usual practice, the work of relocation of these utility facilities will be carried out by and at the expense of the owners; and I shall be obliged if the board will issue an order covering this feature accordingly."

The board had made a grant out of government funds for unemployment relief; but the order in council said that those funds must only be used for the safety, protection, and convenience of the public. So here was the situation: an order had been made apportioning the whole of the cost, which, under the Supreme Court judgment includes utilities cost. The railways go to the board and ask that they reconsider the matter with regard to the utilities. There was nothing in the evidence or transcript that I could find to show that safety, protection, and convenience of the public was a paramount consideration.

In fact, counsel for the town of New Toronto opened his case by saying at the outset: "I would like to point out that we are not in a position to establish our case on the basis of a traffic count, because we know that a traffic count at the present time would not justify the expense." And he asked that the matter be considered as a work for relief of unemployment in the municipalities of Etobicoke and New Toronto.

The board brought the utilities before it and after a hearing decided that the work was for the safety, protection, and convenience of the public, and it ordered the utilities to move their facilities at their own expense.

Now then, the board's rule, as Mr. Kerr was good enough to give it, ends up by saying that the Board has always considered that where a project is in reality *pro bono publico*, the utility companies should bear the expense and move their plant and equipment for their free use of the streets and at their own expense because it was *pro bono publico*. That seems to indicate some relationship in the Board's mind between public utilities, and the public good. Therefore, if it is for the public good, the utility pays for the public good.

Now, that same reason is just as good when applied to the railways. If applied to them it should result in their paying 100 per cent of their costs. If it is a reason to make anyone pay their full costs *pro bono publico*, then that reason is just as applicable to a railway company as it is to a telephone company.

They talk about the free use of the streets. Of course we have the free use of the streets. But so has the railway the free use of the streets for its crossings; and the board is only concerned with crossings. But again, if parliament has given a telephone company the free use of the streets, what reason or justification is there for the board saying that it does not agree with parliament giving utilities the free use of the streets and will make them pay for it.

Now, the next thing I want to point out is that every reason that the board has given in any judgment that I can find—and I think I have canvassed them all—as to why utility companies should pay, is equally applicable to any railway and would be equal justification to compel any railway to pay the whole of its costs. Let me run through the reasons briefly. First, because the works are ordered for the public good, the utility companies will have to bear their costs for the public good. That is just as applicable to a railway.

Second, because it is not unreasonable to expect the utility companies to bear the cost of any change in their wires made necessary by the change in the street. Why should not a railway also pay for any change made in the streets?

Third, because there was no guarantee that the grade of the street would not, at some future time, be changed, in the public interest.

Fourth, because the principal works were ordered for the safety, protection, and convenience of the public. The same thing applies to the railways.

Fifth, because the utilities do not pay a licence fee for the use of the streets. I have already discussed this reason.

Sixth, because the utilities are there and their removal involves some cost. Well, that applies equally to a railway. Its works cause most of the costs; and lastly, because the board has followed that principle in the past.

Now, Mr. Kerr also quoted from the following page of the board's report and referred to a judgment of the Supreme Court of Canada in which it was said that the board had jurisdiction to lay down that rule. The quotation is accurate, but let me just demonstrate this: that was one case where the Supreme Court said that the board had jurisdiction to lay down the rule; but there is another judgment of the Supreme Court of Canada which says that the board has no jurisdiction to lay down such a rule; and that is the case of the *St. Eugene versus Canadian Pacific Railway*, which was a railway crossing case in which the junior and senior rule which the board has, at times, used to apportion costs between railways and municipalities, was before the Court.

The judgment of the court delivered by the late Sir Lyman Duff said that "It seems very clear that this court has no power by laying down a rule, nor has the Board itself power by establishing a practice to limit the discretion with which the board is invested."

Now, here you have two conflicting decisions of the Supreme Court; but that was not the basis of the Supreme Court of Canada's judgment which was referred to in the board's report. The questions which were put before the Supreme Court—and Mr. Kerr was good enough to refer to one of them—were these: and these questions were stated by the board itself in one of its orders: first, is the board, when exercising its powers to apportion or award compensation under sections 39 and 259 of the Railway Act bound, as a matter of law, to exercise such powers in a judicial manner and in accordance and in conformity with the established principles of law and equity applicable to the facts and circumstances of the case before it, or has it an absolute discretion over all interested or affected parties?

The other questions had to do with whether or not, if the Board were so bound was the board's judgment in conformity with the established principles of law and equity and did the board have jurisdiction to order utilities to move at their own expense; and whether there was evidence in law to support the Board's judgment and so on; but the first question is the principal one.

What did the Supreme Court say? It said that the questions were essentially questions of fact, and that the board was the final arbiter of all questions of fact. Because the questions did not involve a question of law or jurisdiction the Supreme Court of Canada held that it had no power to intervene. They also said in another judgment where the same question of the board's exercise of its discretion was involved, that if its discretion was wrongly exercised, that would be a matter for parliament. Now that judgment is a long judgment, and it clearly shows that the board, being a court created by statute, finds its powers, and the limitation of those powers, in the statute creating it, which is the Railway Act.

The Supreme Court of Canada said that we will look at this question and see if there is any rule of law in the Railway Act which limits the Board in the exercise of its discretion; and it said there was no such rule of law. Why? Because there was nothing in the Railway Act to take anything away from the absolute and unlimited discretion which was vested in the board.

The Act itself says that on a question of fact the board's decision is final and conclusive. Now, it is this unlimited discretion that in my submission should be curtailed, but only to the extent that the courts of this land are curtailed in the exercise of discretion.

Mr. CARRICK: May I ask a question. Would you tell me again what the decision was when they held that special hearing in 1932?

Mr. MUNNOCH: I would be very glad to do so, sir, and perhaps with the permission of the committee I might read a few of the pertinent excerpts from it.

Mr. CARRICK: Did they recommend that compensation be allowed?

Mr. MUNNOCH: They said that if the matter were before them for the first time and they were not limited by previous decisions they would find no reason for not awarding the utilities their costs.

Mr. CAMPBELL: Well, obviously this has been a contentious matter for 23 years now. Do you think it would be proper for this committee to try to make a finding on what might be considered an ex parte consideration? Although I know you have been very fair, it is an ex parte matter which you have presented in the sense that none of the opposite parties are represented.

Mr. MUNNOCH: The only opposite party could be the board.

Mr. CARRICK: There are the municipalities. They would be the ones who would be fixed with the costs—and the provinces.

Mr. MUNNOCH: They often originate these works. The provinces, as we have heard, cannot be compelled to contribute, but the utilities, may I remind you sir, contribute through federal taxes, provincial taxes and municipal taxes and then the board comes along and makes a fourth levy.

Mr. CAMPBELL: Do you pay taxes on your lines?

Mr. MUNNOCH: Yes.

Mr. JAMES: When you lay your lines, what kind of arrangement have you as compared with the pipelines which would be classified as being a utility? Do you have to purchase your right of way, or how do you work that out?

Mr. MUNNOCH: We have the free right to use the streets under our special Act of parliament, and also under the Railway Act. Where we go on private land we must negotiate for the right of way.

Mr. JAMES: But the pipelines, for instance, would not even have the free right of way of the streets and they would have to negotiate for them?

Mr. MUNNOCH: I am not certain as to their powers. They have very broad powers in the Act creating them and under the Pipelines Act. I am not altogether familiar with that, but I do believe they would have to use the streets and in certain cases run down the streets just as the telephone company has to do.

Mr. JAMES: What I cannot understand is why the Bell Telephone Company is the only utility here today if this is such a great offence against the justice of the case?

Mr. MUNNOCH: They are more vigilant.

Mr. HAMILTON (York West): They got their money from the people, and it does not bother them.

Mr. MUNNOCH: May I suggest a possible answer to that? In the report of the board, schedule 5, it shows the money expended on grade crossing works by provinces. You will notice that a total of \$51 million is shown. \$32 million of this was spent in Ontario and \$7 million in Quebec. The only other province that topped \$1 million was Alberta with \$2 million. The Bell Telephone Company operates in Ontario and Quebec and in those provinces only where most of this work is done, and we are getting the burden of that.

Mr. CARRICK: Does it have any bearing in your mind that when you go before the Board of Transport Commissioners to fix your rate, I presume you show this expense as an ordinary expense, and it is written off ordinarily—

Mr. MUNNOCH: No, those are capital expenses.

Mr. CARRICK: Are those taken into consideration when the Board of Transport Commissioners fixes the rates which are designed to allow a fair return to the shareholders of the Bell Telephone Company?

Mr. MUNNOCH: No, they do not go on that basis, but on a revenue requirement basis that is, how much revenue do you need over and above your expenses to run your business and pay a reasonable dividend.

Hon. Mr. MARLER: Are these costs which you must incur in part expenditures that the board takes into account in determining your rates?

Mr. MUNNOCH: Only through the depreciation account, but not as a capital expense as these are. They are not taken into account except in so far as they get into depreciation.

Hon. Mr. MARLER: If they figure in the depreciation that means that ultimately you get your money back?

Mr. MUNNOCH: Ultimately and after a long period of time, but we have to provide the new capital in the meantime and we get no return on it.

Mr. JAMES: Would you not agree that in the long run, the people who are taking your Bell Telephone service, for instance your customers,—they would also be municipal taxpayers and provincial taxpayers and federal taxpayers,—and they would also be paying a share. Of course, they would not be paying a great deal of the share of the tax or money you spend in changing your lines?

Mr. MUNNOCH: Of course, all these costs ultimately come back to the consumer, but in the case of the telephone company, may I just mention that the taxes it has to pay are considerable.

Hon. Mr. MARLER: But surely your argument that the taxes are considerable, Mr. Munnoch, is one that applies to all corporations and to all individuals?

Mr. MUNNOCH: Quite. From a tax point of view we are dealt with no worse than any other.

Hon. Mr. MARLER: Therefore surely it is not an argument that applies to railway crossings?

Mr. MUNNOCH: We are only complaining that we have to contribute more than any other taxpayer. We do not question having to contribute through taxes but we do question having to make after taxes an additional capital investment from which we derive no revenue, get no benefit, which adds nothing to our service, and gives us nothing we did not have before.

Hon. Mr. MARLER: The only thing which occurs to me in connection with your argument is that as I understand it when it comes to laying your lines across the right of way which belongs to the railway company—

Mr. MUNNOCH: I beg your pardon, sir. The right of way does not always belong to the railway. In some cases it does, but in others it does not—

Hon. Mr. MARLER: But in the majority of cases—I am quite ready to admit it is not invariable—but whether it is city property or railway property you do not have a permanent right to maintain your facilities through that particular piece which serves either as a street or a right of way. You have what seems to me to be a temporary right which may be terminated when certain conditions happen. I take it, for example, that if the municipality wished to close a street that they could say, “Take your wires and remove your facilities,” and you could not say no.

Mr. MUNNOCH: I respectfully beg to differ with you on that.

Hon. Mr. MARLER: You mean you have a perpetual right?

Mr. MUNNOCH: Once we place our line in a precise location we have the right to stay there—

Hon. Mr. MARLER: Indefinitely and regardless—

Mr. MUNNOCH: As long as we need it for giving our service.

Hon. Mr. MARLER: That is certainly not my impression, Mr. Munnoch. My impression is that you have the right to place your wires by virtue of an order of the board—

Mr. MUNNOCH: No, by virtue of our statute in some cases with the consent of the municipality and in other cases where we cannot get the consent of the municipality by order of the board to enable us to use our powers without the municipality's consent—

Hon. Mr. MARLER: But certainly in the case of 377 of the Railway Act you certainly—I am not saying that implies invariably and that every time you lay a wire you have to have the approval of the board—but I do suggest that under 337 you may get permission to install your lines by an order which I understand is revokable and can be altered by the board if it wishes.

Mr. MUNNOCH: We have two rights to go on the highway, one under our special Act by which we do it if we can with the legal consent of the municipality and the other is under the section you refer to where we cannot get the consent of the municipality and we can go to the board and get leave of the board to exercise our power without the municipality's consent—

Hon. Mr. MARLER: The case I was referring to was the case of the railways—it is 378 which deals with the highways—

Mr. MUNNOCH: That is the railway crossings—

Hon. Mr. MARLER: Yes.

Mr. MUNNOCH: We have to get the consent of the railways, of course, only in order to see that we conform to the safety construction rules laid down by the board and when we construct across a railway we have to conform at our own expense with the safety construction rules that the Board of Transport Commissioners have laid down for that kind of crossing—

Hon. Mr. MARLER: But are you suggesting that having obtained leave to put your lines in a particular place that you have the right to maintain them there indefinitely?

Mr. MUNNOCH: I suggest we have, or that we be compensated—

Hon. Mr. MARLER: —but compensated for what?

Mr. MUNNOCH: For the cost of moving them or for the destruction of them, or whatever happens to them.

Hon. Mr. MARLER: I must admit I find that a novel idea. You have what seems to me to be a right which is revokable by the Board of Transport Commissioners—at least, that is my understanding of it—but yet you say, “I have such a right there and if I am told I must remove my wires, I am entitled to compensation.” I find that difficult to accept—

Mr. MUNNOCH: Let us, for the sake of argument, assume that the board has power in respect of a railway—

Hon. Mr. MARLER: But we are talking about the Bell Telephone at the moment?

Mr. MUNNOCH: I thought we were talking about the treatment of the railways on the one hand and of the Bell Telephone company on the other hand—

Hon. Mr. MARLER: But I take it you are more interested in the treatment of the Bell Telephone Company at the moment?

Mr. MUNNOCH: Yes.

Mr. HAMILTON (York West): May I ask counsel a question? What takes place in an operation like the removal of all the services required to build the Toronto subway? Is there a compensation to Bell for moving its equipment?

Mr. MUNNOCH: Yes, the Toronto Transportation Commission paid the costs.

Mr. HAMILTON (York West): To move those lines?

Mr. MUNNOCH: Yes.

Mr. HAMILTON (York West): To go back to the question Mr. James asked about the taxpayers paying, I gather the distinction there is that there are a great many more people who get the benefit of a new grade separation than who are just shareholders in the Bell Telephone Company—many more?

Mr. MUNNOCH: Of course every citizen who passes along that particular highway gets the benefit.

Mr. HAMILTON (York West): Whether he has a telephone in his home or not?

Mr. MUNNOCH: Yes.

Mr. HAMILTON (York West): And if there was an assessment against this fund tax-wise if it were on an equitable basis all those who make use of the subway regardless of their telephone installation would pay their share?

Mr. MUNNOCH: Yes, and may I point out that in cases of subway construction where it has come before the board—where bus transportation companies and bus tramway companies have operated their routes through the subway the board will not order them to pay.

Mr. BARNETT: May I ask one more question. In what manner does the treatment which your public utility company receive under the Board of Transport Commissioners differ from the treatment received where a provincial highway authority is widening a highway and you have to move your line?

Mr. MUNNOCH: The provincial highway authorities pay us a portion of our expenses in practically every case. In a few cases we think we ought to move them anyway.

Mr. CAMPBELL: That does not always apply?

Mr. MUNNOCH: No, there are different rules in different provinces and a lot depends on the circumstances. We often take the point of view, "Here is a line we think ought to be moved anyway, so we will move it."

Mr. CAMPBELL: In one province any utility getting permission to build a power line along the highway must sign a contract which states that they are to be responsible for moving their line over any time the municipality decides to widen the road or the provincial government?

Mr. MUNNOCH: Fortunately, we have not been faced with any such condition as that.

Mr. HOSKING: You mean if you are running a telephone line along the side of a township road and the township decided to widen that road, that they have to pay—

Mr. MUNNOCH: They pay a certain percentage of the cost. Now, in Ontario they have what they call the Public Works on Highways Act which provides that in the absence of an agreement the municipality pays 50 per cent of the cost.

Mr. HOSKING: And yet they give the Bell Telephone Company without charge the right to put those lines there and leave them there.

Mr. MUNNOCH: Parliament has given us the right to put them there without charge because the telephone rates would be a great deal higher if we had to pay for every street we go on. We could not serve the public otherwise.

Mr. JAMES: In respect to township roads, I am thinking of one particular line which I saw them laying underground along the boulevard along the side of the road outside of my own town, do you pay for the right to go along there?

Mr. MUNNOCH: No.

Mr. JAMES: You are there more or less under the Act.

Mr. HOSKING: Do the townships have the right to tell you to keep back along the fence?

Mr. MUNNOCH: We have to consult with the municipal engineer as regards location. We cannot open up a street without consulting with the municipal authorities for locations. Our Act says we must go along the sides of the highway. We naturally endeavour to keep off the highway if possible.

Mr. CAVERS: If buildings are moved within a municipal corporation and it is necessary to cut wires you do that at your own expense?

Mr. MUNNOCH: That depends whether we are under our own Act or under the section of the Railway Act which the minister referred to. If it is under the Railway Act the Act says we must raise the wires at our own expense. If

we are under our own special Act and have the consent of the municipality we do not have to. It usually means that we just have to lift them and they get through.

Mr. HERRIDGE: In British Columbia, the British Columbia Telephone Company had to move 20 miles of line at their expense in moving a pioneer line. And quite recently a power utility built a new line for several miles in my district and within one year several curves were straightened out on the road and they had to move those poles that were placed there the year before because of the straightening of the road, and they had to move them at their own expense.

Mr. MUNNOCH: That might involve circumstances and conditions of which I am not aware.

Mr. HOSKING: It would seem to me as a city councillor that we should refuse in all city councils to give you any right to put your lines on the street and then the Board of Transport Commissioners would force the municipalities into giving you the right, and from then on if you had to move your lines you could be made to move them at your own expense.

Mr. MUNNOCH: If we had to go through all those delays when people wanted to get telephone service we could not get the service through and the municipal councillors would very soon have the electors on their neck.

Mr. HAMILTON (York West): Is the British Columbia Telephone Company a public company?

Mr. HERRIDGE: No.

Mr. SPENCE: Mr. Chairman and gentlemen, I am afraid we have to say we are very strongly opposed to the proposals put before you by my learned friend Mr. Munnoch. In the first place I would like to refer again to section 378 of the Railway Act which says in part:

Subject to the provisions of this section, any company empowered by special Act or other authority of the parliament of Canada to construct, operate and maintain telegraph or telephone lines, may, for the purpose of exercising the said powers, enter upon, and, as often as the company thinks proper, break up and open any highway, square or other public place.

Then there are a number of items and we come to item (f):

If for the purpose of removing buildings, or in the exercise of the public right of travel, it is necessary that the said wires or poles be temporarily removed by cutting or otherwise, such company shall, at its own expense, upon reasonable notice in writing from any person requiring it, remove such wires and poles; and in default of such company so doing such person may remove such wires and poles at the expense of such company.

Now, in that section of the Railway Act it is clear that the telephone companies which are on the highways free, with no charge to themselves, are to be moved or have their facilities readjusted at their own expense when the highway requires it. In other words, I suggest that if the highway is diverted from one point to another—straightened as one of the honorable members said—the telephone company which has the right under its charter to occupy the highway and would have the right under its charter to occupy the highway at its new location would surely lose its right to occupy the old location and would have to change over at its own expense.

This is a matter which has been carefully considered on many occasions by the Board of Transport Commissioners since 1912 and the board has come up with the same answer every time. The board has the power under the Act

to change, vary or alter or rescind any order that it makes under section 52 of the Railway Act, and at any time if the board had thought it was a fair thing to do it could have changed its old precedent and adopted a new one.

Section 52 says:

The board may review, rescind, change, alter or vary any order or decision made by it, or may rehear any application before deciding it. The board has always thought it fair to place these expenses upon the utility company and the board's principle has been described by Mr. Kerr who read from the judgment of the chief commissioner in 1937. I do not need to refer to that again. That was supported by the Supreme Court and I suggest it is a very fair attitude for the board to take. It says, in other words, if for example the railway company wants for its own purposes to build a structure across a highway that will interfere with the telephone installations the railway will have to pay the full cost of moving any telephone facilities. But, if on the other hand the highway is being diverted or a subway installed for purposes of public safety the telephone company must pay its own costs because it has free rights to occupy the highway and must go at its own expense where the highway goes.

My learned friend, Mr. Munnoch, put a good deal of stress on the fact that the Bell Telephone Company did not benefit by the changes made. The Bell Telephone Company's benefit has been received ever since it obtained the right to occupy the highways free of charge. The railway company has to pay for its right of way and pay taxes for its right of way whereas the telephone company does not. The telephone company is being very fairly dealt with as it can occupy the highway wherever it goes, and if the highway is raised or depressed, the telephone company must follow along without having its costs charged to someone else. What the telephone company is attempting to do here is appeal that decision of the board. The board already has powers to order the telephone company to be compensated if it thinks it should do so. It has those rights under section 33 (5):

The decision of the board as to whether any company, municipality or person is or is not a party interested within the meaning of this section is binding and conclusive upon all companies, municipalities and persons.

The board has full power to apportion the cost of any work it orders so it could apportion part of the cost of moving the Bell Telephone facilities to the railway or the municipality if it so desired, but it has thought it fair not to do so. Under section 262 the board has a similar power to apportion the cost of protection on a highway crossing. Since the board has always found that was not a fair thing to do, that is to have part of this charged against the municipality or the railway, what my learned friend wants now is to have parliament remove that discretion of the board and compel the board to order some of the cost to be assessed against the other parties. This whole subject was argued at great length even so recently as the hearings of the board which led up to this report. In fact, all of this transcript (indicating) with the exception of a very few pages consists of the argument before the board on the subject. Nevertheless, the board did not see fit after all that consideration to recommend the amendment of the Act and I suggest that this committee should follow the board's advice and leave the board's discretion unhampered. The telephone company bases its case in part on the basis that it should be given the benefit of contribution from the fund. At least part of it would come out of the pockets of the railway companies and municipalities and in some cases all of it none coming out of the Grade Crossing Fund at all. Suppose a subway costing \$500,000 has to be constructed. 60 per cent of it or \$300,000

would be borne by the Grade Crossing Fund and the balance would be shared by the municipality and the railway. If the Bell Telephone Company is to receive payment out of the Grade Crossing Fund for the removing of the facilities it has placed upon the highways that will mean there will be less of the Grade Crossing Fund available for the work on the subway and the amount to be borne by the railway and the municipality would be that much greater and the fund would not pay any more because its contribution is at the maximum of \$300,000. The whole of the extra amount would have to come from the municipality and the railway. I submit that that result would be very unfair and that it is a departure from what we are trying to accomplish by this bill in the way of relief to the municipalities and the railways of these very onerous expenses.

Thank you very much.

Mr. CARRICK: I suggest, whatever the merits of this question, that there has been enough said to indicate that we do not know enough at this time to make any decision on this question and I would suggest that the minister might consider referring it back for a special hearing of the board or for some other consideration. This committee would be acting very superficially if it tried to come to a conclusion on it.

Mr. HOSKING: Should it not be brought in as a private bill and submitted to this committee at some later date. Is it not beclouding the bill altogether to try to deal with it now. We are off the main object of this bill on a sideline. It would seem that the proper thing would be for this to be submitted either as a government or as a private bill and dealt with just on this particular point. It is only a spur of this bill.

Hon. Mr. MARLER: Mr. Chairman, I was going to say this in connection with the amendment Mr. Munnoch has proposed. The first fact which impresses itself on my mind is that this whole subject was thoroughly discussed and ventilated before the Board of Transport Commissioners; its hearings were public. The railways were present and put forward their views and the municipalities had the opportunity of expressing their views in the matter and after hearing all who wished to make representations the board now says as they do, I think on page 66 of their report in the printed version:

As the objection is not to the legislation under which the Board acts but to the principle which the Board follows which it may change if it sees fit the Board does not recommend any change in the Railway Act in this connection.

So that we have here those who not only heard the submissions but who had the actual experience of administering the fund say they do not in effect recommend any change in the Act at the present time. There is no doubt in my mind and I am sure Mr. Munnoch would agree with this that the amendment which is proposed would in effect add something new to the bill. The bill does not in itself change the powers and discretion of the board. It enables the board to use more money from the Grade Crossing Fund and I admit it may increase the burden which will be cast on the Bell Telephone Company and similar public utilities.

But with the exception of changes as to their powers to use more money out of the fund it does not change the powers and discretion of the board itself. What Mr. Munnoch is suggesting is that the powers of the board and their discretion should be governed by a new principle, that is, they should be governed by the same established principles of law and equity as govern the discretionary powers of the courts. I think the long experience with the Railway Act as it now stands is that it was intended that board should have

an absolute discretion, whereas Mr. Munnoch is asking that it should have a discretion which is to be modified by the principles of law and equity as in the case of discretionary powers by the courts.

The quotation which he gave rather suggests I think that in determining the apportionment of costs the board is not acting in a judicial capacity but is acting in carrying out what seems to me to be an administrative function and as well as I can recall it from the case which Mr. Munnoch cited his reference does support that view that it is not a judicial function, this apportionment of costs, but an administrative function.

Mr. HAMILTON (*York West*): The suggestion in itself is not an improper one, that some of these decisions might be subject to judicial review on a judicial basis.

Hon. Mr. MARLER: I think that would be a rather revolutionary step as far as the Railway Act is concerned.

Mr. HAMILTON (*York West*): It might be a "throw-back" but it need not necessarily be an unwise course to follow.

Hon. Mr. MARLER: I am not denying the right of the Hon. Member to hold that view. All I say is that I do not subscribe to it. I think really that having regard to the purpose of this bill which is to enlarge the powers of the board with regard to the use of the grade crossing fund I personally would have to oppose an amendment which was intended to make the occasion of the presentation of this bill the opportunity of reviewing the powers of the board with regard to its discretion under the Act.

I would like to add this, that under sections 36 and 38 of the Act the Minister of Transport in the first case and the Governor in Council in the second case can refer matters to the Board of Transport Commissioners for their consideration and if it was the view of the committee that the question ought to be given further consideration by the Board of Transport Commissioners I would be glad, if the committee did come to such a decision, to consider whether I should make such a recommendation or whether I should consider representing to the Governor in Council that he should make a representation in that sense to the Board of Transport Commissioners. I do not say that I undertake formally to do that unless the committee believes that that would be a useful step.

The point that perhaps might disappoint Mr. Munnoch is that the very people to whom the question would be referred are those who have already considered it, and some of them considered it in a sense diverse to his interest. But I think that is perhaps the best and only hope I can afford him, and that would be if the committee wish me to do so, in which case I would either consider making a reference to the board myself or asking the Governor in Council to do so under section 38.

Mr. BARNETT: Undoubtedly the amendment which has been proposed by the representative from the Bell Telephone Company to us is beyond the scope of the bill as we have it so far and I am wondering whether the Hon. Minister feels it necessary that this committee should reach some immediate decision on making a suggestion to him along these lines he has been discussing or whether perhaps after due consideration when the matter comes back into the committee of the whole House that we might then be free to raise and discuss this matter with the minister after, as members of the committee, we have had time to give the matter some further consideration.

Hon. Mr. MARLER: I would have no objection to that Mr. Chairman.

Mr. MUNNOCH: May I make one remark in relation to the last part of the board's report in which they said they could alter this rule. We have been trying to get the board to vary this rule for twenty odd years and the latest

example of the fact that they will not depart from this rule is to be found in the Davenport Road crossing case at Toronto which was decided in November after the board had made its report. Those who are familiar with the board's report will recall that the railways stressed very strongly that the board should apply the benefit rule in apportioning cost and I think the counsel for the railways at these proceedings have referred to the Davenport case. The Davenport Road case came on after the board had had the benefit of the discussion of this benefit rule and it had made its report. It commenced its judgment by saying that the board had decided to proceed to allocate the costs of this work according to the benefit rule.

They decided that the railways benefited and they ordered them to pay a contribution toward the costs measured according to the board's judgment of their benefit. They found that the city of Toronto would benefit and they ordered the city to pay a portion according to the measure of the benefit they found. The Toronto Transportation Commission was found to benefit by the construction of this subway because they would save their present contribution of \$6,000 a year to the annual maintenance cost of the existing protection. So they ordered the transportation commission to move their facilities at their own expense, that being the equivalent of benefit they received. But when it came to the Toronto Hydro Electric System the board did not find any benefit accruing to them or that they contributed anything to the danger. They simply followed this rule and said: "you, Toronto Hydro because you are a public utility and because of this rule will move your facilities at your own expense."

It is suggested that perhaps this amendment goes a little beyond the scope of the bill. Might I respectfully submit that the Supreme Court has said that when it is a question of how the board is going to exercise its discretion it is a matter for parliament. Parliament apparently intends to entrust to the board the vast sum of \$5 million a year towards these works. The railways appear—they want to get all of that they can. My friend Mr. Spence stands up and opposes the telephone company getting any contributions. Now if the benefit of the rule is going to apply to the railways and to the municipalities why should it not apply to the telephone company? That, gentlemen, is just fair justice.

Mr. HERRIDGE: Mr. Chairman I have been thinking this thing over and I have listened to witnesses telling the committee that this is chargeable to operations for the year...

Mr. MUNNOCH: Capital costs.

Mr. HERRIDGE: I can see that, Mr. Munnoch. I suggest that the witness is making his representations to the wrong committee. I think it would be quite reasonable to allow the Bell Telephone Company which has to incur this expense—which relates rather to maintenance than to an extension of their facilities—to receive some consideration so far as income taxation is concerned.

Mr. MUNNOCH: Sir, may I correct you? It is not an extension of our facilities we are talking about. What we have to do is to take the facilities we have got out of the way and put them back some place else. We do not want maintenance costs. We can look after our maintenance needs ourselves. We are not like the railways who come asking for a contribution to the cost of maintenance. We are ready to do it ourselves.

Mr. HOSKING: What effect would this rule have on the power of the transport commissioners having a right to say to a municipality: "you must allow these people to put this line on the street whether you want it or not"? Does the municipality if this is passed have the right to sue the Board of Transport Commissioners for exceeding the law? It seems to me that it curbs their power quite a bit once you say that they have to obey the laws of this

country. I am not a lawyer, but I was wondering what effect that would have on the Board of Transport Commissioners, saying to the municipality: "you must allow them to go there." Would this curb it? And if it did, would the telephone people want that done?

Hon. Mr. MARLER: I can understand that if they are given free lance, it later becomes rather heavy perhaps for those in the business of giving a future consent, and they might be a little more difficult to persuade.

Mr. HAMILTON (York West): Is anybody prepared to move this amendment, or are we in order in discussing it unless somebody moves it?

Mr. GREEN: Mr. Chairman, I understood when the committee rose at 6.00 o'clock that we were merely to finish hearing the witness, and that next week the committee would go about making its report. There are different points to discuss while we are dealing with the report.

The CHAIRMAN: No. That was not understood.

Mr. GREEN: I suggest if there are no more witnesses to be heard, that the committee should now adjourn and proceed next week.

The CHAIRMAN: Why not carry on tonight until 10.00 o'clock and get as far as we can?

Mr. GREEN: We have other obligations; and that was the understanding at 6.00 o'clock.

The CHAIRMAN: No, it was not the understanding.

Mr. GREEN: I pointed out at that time that I did not think it was fair to try to rush through the final dealings with this question.

The CHAIRMAN: I asked the committee if we should not meet at 8.00 o'clock tonight.

Mr. NICHOLSON: Mr. Chairman, my understanding was that we would finish in about ten minutes. We have been here since 10.30 this morning, and to accommodate the minister who could not be here tomorrow morning or tomorrow afternoon I understood clearly that we would finish it in about ten or fifteen minutes tonight. I think we should do justice to these several proposals which are before us, and I think it would be most improper to try to rush through this matter.

The CHAIRMAN: We are not rushing through it. We have had three sittings on it.

Mr. NICHOLSON: If we are finished with the witness, I move that the committee now adjourn.

Mr. CAVERS: If it is the wish of the committee to deal with the motion, I shall move the motion in order to have it dealt with.

Mr. LANGLOIS (Gaspé): There is a motion for adjournment.

Mr. CARRICK: I would like to have some expression of opinion by the chairman on the matter.

The CHAIRMAN: My opinion is that we should sit until 10:00 o'clock. We would be sitting in the House until 10:00 o'clock anyway, and if we do some work tonight or until 10:00 o'clock I think it would help us out in finishing the bill at a later date.

Mr. CARRICK: Would the minister be sure that he would be available next week?

Mr. GREEN: This bill brings up some very far reaching questions and we have had important evidence given today which should be considered. Part of it was given when there were comparatively few members here. There has also been a suggestion made with regard to the penalty clause which I hope the minister himself will consider over the weekend because there was a very strong

argument made by both railways in favour of this penalty clause being written into the Act. Therefore I would suggest that if the committee is to do proper work we should not be asked to sit three times a day and rush this thing through in one day. We started at 10:30 o'clock this morning and we sat from 10:30 until 1:00 o'clock, and again from 3:30 until 6:00 o'clock; and now I suggest it is making it a little thick when we are expected to sit again from 8 until 10:00 o'clock and to reach a final conclusion on these matters under those conditions, especially when I was given to understand yesterday or the day before that the committee would only sit this morning, and then we would sit again tomorrow morning.

The CHAIRMAN: Let us adjourn then until the call of the chair.

May 10, 1955.

10.30 a.m.

The CHAIRMAN: Gentlemen we have a quorum. We are on Bill No. 259 an Act to amend the Railway Act. Are there any questions which members of the committee would like to ask the Hon. Minister or the officers?

If not we will go on to clause 1.

Mr. GREEN: Now that we have finished with the evidence, I have just one suggestion to make with regard to the bill. I may say I was very much impressed by a request which was made by the two railways for an amendment to the Railway Act which would provide a penalty against people who disregard signs, signals or other protective devices which have been erected pursuant to order of the Board Transport Commission. They were united in their request for this amendment and it did seem to me that such an amendment would be right in line with the purposes of the grade crossing fund itself, which is to prevent accidents. Those railway officers are the ones who know from practical experience what could be done to cut down the number of accidents—not only fatal accidents but accidents in which people are injured and also accidents which result in property damage.

I do not believe they would have made those recommendations without having given the matter very serious consideration and it does seem to me that this is a sensible suggestion. They say that at the present time it is very difficult to obtain a conviction under the different provincial highway laws in cases where a person disregards these railway signals. There was some suggestion that the provinces should amend their own laws to meet this situation, but as practical men we all know that by the time ten provinces have passed measures to deal with this situation we shall all be dead. You would have ten different laws and you would completely lose the effect of having one uniform law from coast to coast providing that if a person disregards a signal—and not a signal which the railway companies put up themselves, but a signal authorized by the Board of Transport Commissioners—then a penalty will be imposed, and I can see no objection to having a provision of that kind written into the Act.

The railways are asking that it should be in the form of an additional subsection to section 416 of the Railway Act and that section as I read it provides for a penalty where a person walks across a railway crossing when there is a nearby footbridge over the track. That is a penalty already provided under the Railway Act, and I suppose that there are only a limited number of cases where such circumstances would arise. But the amendment they now propose would meet conditions which are far more widely encountered. I therefore hope that the committee will recommend that an amendment of this type should be written into our law. The railways would then be in a position to announce that there was such a measure on the statute book and to prosecute

anybody who broke it. Members will notice that the amendment covers vehicles and foot passengers. Certainly at the present time there is no regulation under which a person who climbs over a gate and walks onto a railway track can be punished. The proposed clause would meet such a situation, as well as the failure of a driver to pay attention to a signal.

I do not think that there is any need for me to go further in discussing this matter. Members have had the problem very thoroughly explained and I think that everybody is in a position to have formed his own opinion as to whether this request by the railways is sound. For my part I would just like to go on record as indicating that I think it is a very reasonable suggestion, and I hope the amendment can be written into the Act.

Mr. LEBOE: There are, I think, some problems which we must look into in connection with this question. One of them concerns the case where a railway station has a crossing within a very short distance—possibly half a mile or one third of a mile away. Occasionally you will find that when a switch engine is operating there may be a block signal within that area although there is no intention on the part of the driver of that locomotive to go across that crossing for a considerable time, possibly not for half an hour. The signal, however, would be operating at all times while the switch engine was working in the area. If you cut down the distance between the signal and the contact, however, you may very well be doing so at the cost of endangering the lives of passengers in fast trains which may be going through at sixty miles an hour. I do not know how a railway company can take care of both of these circumstances unless their signals are manually operated.

Yesterday, for example, as I drove up to a crossing there was a switch engine operating at a small station nearby, and the signals kept going back and forth; the warning light was flashing on and off but people were driving over the crossing in both directions because there was no locomotive within half a mile of that crossing, despite the fact that the signals were working. No train would be passing over the crossing for, maybe, ten or fifteen minutes, and if a regulation to make stopping compulsory were rigidly enforced, you would have a file of traffic held up for no reason. I think the whole matter would be left in the air unless we heard something more specific about this suggestion than we have today.

Hon. Mr. MARLER: So far as I am concerned I entirely share the views which Mr. Green holds about the desirability of cutting down highway accidents, and I am perfectly sure that if the committee were being asked to vote for or against highway accidents we would be unanimous in saying that we thought anything ought to be done to reduce the possibility of accidents so far as this is possible. However, the point which I would like to emphasize is that the subject matter of what we are discussing—and I take it that we are considering, although it does not seem to be before the committee the amendment proposed to provide a penalty for disregarding any signs, signals or other protective devices installed at a railway crossing—I cannot help remembering the fact that this whole subject was discussed before the Board of Transport Commissioners, and they said in their report at page 69 in the printed version:

Other suggestions more closely allied to motor vehicle operation, including those of an educational nature respecting public observance of grade crossing signs and protective devices, compulsory speed reduction and compulsory stopping of vehicles under certain conditions, and the strict enforcement of prescribed highway safety regulations were placed before us.

These are matters not within the jurisdiction of the board but nevertheless they are of interest to the board and might usefully meet

with the attention of the provincial committees herein elsewhere suggested, as they constitute a part of the overall problem of highway accidents concerning which there is a rapidly mounting national awareness.

In other words, the Board of Transport Commissioners thought that this was a subject properly for highway legislation and not for an amendment to the Railway Act. I think the fact that they did not recommend a specific amendment to the Railway Act is a very conclusive indication that the Board which administers the Grade Crossing Fund and has to do with these grade crossings generally did not believe that it was appropriate to put this in the Railway Act.

Since the committee met the other day I asked my department to look into the matter of provincial legislation. I shall now give you two examples.

First of all, I shall cite the Nova Scotia legislation which is section 117 of the Motor Vehicles Act, c. 184, R.S.N.S., 1954 and which reads as follows:

117. Whenever a person driving a vehicle approaches a highway and railway grade crossing and a clearly visible or positive signal gives warning of the immediate approach of a railway engine, train or car, it shall be an offence for the driver of the vehicle to fail to stop the vehicle before traversing such grade crossing.

Mr. NICHOLSON: Is there a penalty attached to such a violation?

Hon. Mr. MARLER: I have not read all the Nova Scotia legislation, but I have yet to see a motor vehicle act which did not contain a clause which said that whoever violated the provisions of the section—or violated the provisions—and it enumerates a number of them—is liable to a penalty of so many dollars, or in default of payment, to imprisonment.

Mr. JOHNSTON (*Bow River*): Upon conviction.

Hon. Mr. MARLER: I suppose it is only upon conviction that they would be liable to the fine or penalty. So, in generally all motor vehicle legislation there are teeth in the Act, and it is not just the expression of pious hopes that somebody will stop at a certain crossing or place, and if he does not so stop, there will be penalty. I take it that all legislation of that kind contains teeth of some kind, and I do not think it is necessary to go further into the Nova Scotia legislation, other than to say that such legislation probably does provide a penalty for this offence. I think we can take it that there are none of these offences spelled out for which there is no penalty.

When we come to the British Columbia legislation, we find that it is section 60 paragraph (2) of the Motor Vehicles Act, Chapter 227, R.S.B.C., 1948 and it reads as follows:

(2) Every person driving or operating a motor-vehicle upon any highway approaching a grade crossing of an intersecting railway at which is erected an automatic electric bell and warning device of the wig-wag or flashing light type shall, if the bell is ringing or the warning device is in operation, stop the motor-vehicle and shall not enter upon or cross the railway while the bell is ringing or the warning device is in operation.

So there is another example, making two provinces which have legislated specifically on this subject.

According to my information Manitoba and Saskatchewan have provisions somewhat similar to British Columbia. Quebec has a limit of twenty miles an hour at level crossings. I can well remember the time when the statute required all motor vehicles to stop at railroad crossings. I can well remember the first year. People stopped. But the next year, fewer people stopped; and

in many places now no one stops. But I have not given these examples to show the wisdom of the legislation. I merely give them to show that here is a field which is properly a provincial one and that it is occupied by a number of provinces.

I would be most hesitant, speaking for the government, to accept an amendment by which we were going to incorporate what is in effect highway legislation into the Railway Act. I hope the committee will not consider adopting this amendment which, as I have said earlier, has already been the subject of discussion before the Board of Transport Commissioners. In making the suggestion that the committee do not adopt it, I do not want to disagree with what Mr. Green said earlier, or what must be in the minds of everybody here, namely that we all want to see railway grade crossing accidents cut down. But I think we should all recognize that this is a matter of highway legislation, and that if we want to carry our convictions further we should ask the other provincial legislatures whether they do not hold the view that they should adopt the type of legislation which is suggested by this amendment. As I said the other day, it would seem to be rather seductive to say: "let us have one statute which seems to apply throughout," because it is easy to adopt it, but I feel that if parliament did so, it would be dealing with what seems to be pretty clearly a matter of provincial jurisdiction.

Mr. JOHNSTON (*Bow River*): Would it not raise a constitutional question as well?

Hon. Mr. MARLER: I would not try to persuade the committee about the constitutional aspects of it. I suppose that unless you adopt it, you would find some difficulty in getting the constitutionality of it cleared up.

Mr. CAMPBELL: We are dealing with protective devices. There are many thousands of railway crossings all over the country which have no protective devices at all. I was caught myself on some of those highways which are not used too much, and found myself on a railway crossing before I realized it was there. I am thinking of two different things which could be done: one is, could not the railways put a large red reflector at each crossing? It would not cost very much, and it would be a protection—because the only protection which the public now has are these big crosses at the railway crossings marked on the back, a certain number of feet away from the railway crossing; and at night especially it is very hard to see them. Sometimes you get by before you see them.

Another suggestion—and probably this would come under provincial jurisdiction—is that the highway be widened at each side of the crossing, and that little islands be put in there with red reflectors and stop signs. Those are just two suggestions to which I draw the attention of the committee, and which I think are worthy of consideration.

Mr. JOHNSTON (*Bow River*): I agree with what the minister said a moment ago about our being concerned with the number of accidents at railway crossing. When a question of this nature arises my mind goes back to a few years ago when a man named Murphy, I think it was, came forward with a device for the protection of railway crossings. He showed it to us here in the House, and I think we arranged for a demonstration unit to be set up in Westboro, and some of the members of the House inspected it, as well as some of the representatives of the railways. I do not know if any of the Board of Transport Commissioners inspected it or not; but it was a device which had not only flashing lights on it, but it ran a barrier across the road.

That was a device that had not only a flashing light, but a device that ran a barrier across the road and that barrier was in the form of coil cables that hung down across the road. I thought that was a rather ingenious affair. I do not know what the cost would be and I did not hear the railways nor

the government give any suggestion about it, but I have often wondered what became of it. It seems to me something like that would be a great improvement for railway crossings. On many occasions when people travel across railway tracks they do not hear the sound of the bell and they do not see the light due to poor visibility or a heavy wind, and accidents occur. If we had some sort of device where in addition to the bell and the light there was a barrier that ran across the road, it would be a great assistance. I am not going to argue the price at the moment because I think that is a matter that can be decided on later; after all, \$1,000 or \$2,000 should not be compared at all with a human life. I wonder if there is anyone on the committee, in the railway department, or the government who can tell us what happened to the device that was exhibited here in Ottawa several years ago

Mr. HAHN: Mr. Chairman, it was not my intention to speak too much about this, but Mr. Johnston has raised the question of a barrier to stop cars from crossing these particular railway crossings. I should like to draw his attention to the fact that barriers are not going to stop people or automobiles necessarily. I have known cases—and I am satisfied that those of you who have lived in cities for any length of time know cases—where cars have driven right through the barriers. That is not the answer to it. As far as I am concerned, I would concur wholeheartedly with what the minister has said. I think the responsibility rests with the warning devices. They should be far enough from the railway track to let people know that they are approaching a railway crossing and that they must slow down. Despite these approach signs people will still be killed; they are not careful enough, and it is a matter of education from the provincial point of view. We must learn to take the responsibility in that way.

I would very much like to see underpasses and overpasses. That would be the final answer to the question and it will possibly come in time. At the present time, however, I can see no possibility of stopping all of these accidents; no matter how many barriers, lights or bells we install, we will still have accidents.

It might be an encouragement to the Board of Railway Commissioners if we proposed to send representations in the form of a letter to the various provinces drawing to their attention the need for more adequate signals showing the approach to railway crossings, and asking them if it would be possible to have the roads run parallel to the crossing rather than to have so many level horizontal crossings.

Mr. JOHNSTON (*Bow River*): It is not a case of education. If anyone knew a train was coming, and did not stop, I think he would be pretty doggone stupid. It is not a case of education—people do not want to be killed—it is a case of putting up a device they can recognize. If my memory serves me correctly, I believe a cabinet minister of this government was nearly killed in that way recently. I know that I have crossed railway crossings in storms and I could not hear the bell nor see any light. It is not a case of education. What I am concerned with is what happened to the device which was on exhibition in Ottawa, and I would like to know something about the construction and the price of it.

Mr. NICHOLSON: In spite of what the minister said, I still feel there is a great deal of merit in having this amendment made law. While the provinces might have the jurisdiction, apparently some of them are not too sure of it. When we discussed this matter, I had the Saskatchewan Act, and where it is set out in the Act, that the provincial authorities have the right to put up signs there was no penalty which I could find for anyone who disregarded the signs.

I think it is a matter of concern indeed. If people run into railway trains, not only the people in the car might lose their lives, but frequently members of the train crew lose their lives as a result of these train-automobile crashes. I think if the car driver could come to a stop before running into a train, that the loss of life would not be as great. I think for a few years we should try having this \$25 penalty levied against anyone who disregards a red light or a stop sign.

In our province of Saskatchewan, as I mentioned the other day, stop signs are erected at crossings where people have been killed. I was under the impression that anyone who disregarded the stop signs was liable to a penalty, but I cannot find any reference to a penalty in the Act. On the main line of both the C.N.R. and the C.P.R. in the province of Saskatchewan, I understand there are stop signs and people in trucks or buses or cars are supposed to come to a stop, but as far as I can find out, there is no penalty in Saskatchewan for driving through and ignoring these signs. I think there would be a value in enforcing a penalty for a few years.

Mr. HAHN: Possibly Mr. Nicholson could answer this question. Does he know whether or not there is legislation in Saskatchewan requiring trucks and buses to stop at crossings?

Mr. NICHOLSON: Yes, for trucks and buses.

Mr. HAHN: Is there any penalty attached for that?

Mr. NICHOLSON: Yes, but not for cars.

Mr. HAHN: Why not recommend that they include cars and attach a penalty as well rather than our legislating for the dominion in this one respect which we have no right to do constitutionally, I would say.

Mr. CARRICK: Mr. Chairman, I do not think we should let this recommendation die in this committee. The problem has been given a lot of consideration by the railways and the Board of Transport Commissioners, and this committee. I do not think the benefit of this should be lost. If this committee decided it would be inappropriate to enact a recommendation by federal legislation, what would be the proper channel through which to pass on this recommendation to the proper departments of the provinces which do not have specific legislation on this subject? Perhaps the minister could tell us what would be the proper channel of communication.

Hon. Mr. MARLER: I suppose one would be inclined to write to the provincial ministers of highways and draw their attention to any general recommendation which this committee had formulated.

Mr. WESELAK: We could send them a copy of the record along with it.

Mr. CARRICK: I was thinking there is a delicate balance between the dominion and the provinces, because there is no doubt that this is a matter under the exclusive jurisdiction of the provinces as long as the dominion has not legislated upon it. I was wondering if the appropriate channel would be the Department of Justice? We could let that department decide what would be the best course to follow.

The CHAIRMAN: It looks to me as if the federal government had nothing to do with this. Railway crossings are a provincial concern.

Mr. CARRICK: I think, sir, with respect, if the dominion government did legislate on it, it would be proper and valid legislation which would supersede any provincial legislation, but I think the main question is the desirability of not doing that if it can be avoided. That is why I was suggesting that perhaps the proper thing to do would be to pass on this recommendation to the appropriate department of the provinces with the benefit, as far as possible, of the consideration that has been given to it.

The CHAIRMAN: I think probably a copy of this evidence could be sent to the ministers of the department of highways in the different provinces.

Mr. WESELAK: I think any federal legislation that might have the tendency to override provincial legislation, if it is not necessary, is bad law; because you can get into a situation where a charge is laid under a provincial law, and you get a *ultra vires*, and the case is thrown out of court. I think it complicates the situation.

Mr. JOHNSTON (*Bow River*): I would like to hear from the minister on this subject.

Hon. Mr. MARLER: The subject of these protective devices was actually considered in the hearings before the Board of Transport Commissioners, and a number of suggestions were made to them. But I do not really think that it is within the scope of the bill to discuss various kinds of protection devices which could be used. Quite frankly, there is no change in the Grade Crossing Fund purpose. It is merely a question of the application of the money, and I do not really think that questions concerning the character of the devices themselves are part of the legislation with which we are dealing.

Mr. JOHNSTON (*Bow River*): Are there any officials of the government or of the Board of Transport Commissioners present who investigated the device to which I referred?

Mr. KELLs HALL (Special Engineer, Board of Transport Commissioners): I was Director of Engineering at the time when Murphy's device or invention came before the Board. It was my duty to go out and inspect it along with our Signals Engineer who at that time was one of the best signal men in the country. The thing was investigated by our engineering department very, very fully, and after all the features were considered, the Board was of the opinion that it did not compare either in price or merit with the signal apparatus which we were installing regularly at that time. At that time we were using the bell and the wigwag with gates. But since then automatic gates have become more common and they are conceded to be the very last thing in protection, particularly at mainline double crossings.

Mr. JOHNSTON (*Bow River*): And they are using them more and more?

Mr. HALL: Yes.

Mr. JOHNSTON (*Bow River*): If you investigated it and found that to be true, then that is that!

Mr. HALL: Yes. We investigated it very thoroughly. The railway signal men investigated it too, and the final result was that there was no merit in it. Over the last twenty years we have had hundreds of applications for things of this type, none of which had the merit of those which are now installed—or at least, we did not think that they had.

The CHAIRMAN: Shall clause 1 carry?

Carried.

Shall clause 2 carry?

Mr. BARNETT: I am interested in learning what disposition was made of the suggestion to take some concrete steps in respect to the amendment which has been proposed, or in respect to some legislation covering the sort of thing which is covered in this amendment?

The CHAIRMAN: That would be dealt with in the matters which will come up at the end of the bill.

Shall clause 2 carry?

Carried.

Shall clause 3 carry?

Carried.

Mr. HAHN: Mr. Chairman, I would like to recommend that this committee, if possible, submit its findings or recommendations to the various provincial governments for their consideration of this problem of making it an offence for individuals who do not stop at proper signals on the railway.

The CHAIRMAN: Will that be satisfactory?

Hon. Mr. MARLER: I think that would be most satisfactory. Perhaps the chairman might draft some form of recommendation. I have it in mind that it might be desirable to ask the Minister of Highways of each province to consider how far the existing provincial legislation would attain the objective which the committee has in mind, which is that highway vehicles should not cross railways disregarding signs, signals or other protective devices which have been provided for the protection of the public.

Mr. GREEN: Perhaps it would be more practical to send this proposed amendment to the provinces and ask them for their opinions on it. They may have no objection.

Mr. CARRICK: Would it be satisfactory to leave it with the minister?

Mr. HERRIDGE: I think the suggestion of the minister should be put into effect.

The CHAIRMAN: Is it agreed that the following amendment be sent out to the Ministers of Highways of the different provinces:—

Section 416 of the said Act is amended by adding thereto the following subsection:

(2) Any person who, in using any highway crossing at rail level for the purpose of passing on foot or in any vehicle along such highway across the railway, disregards signs, signals, or other protective devices erected or otherwise provided by the Company pursuant to Order of the Board, is liable, on summary conviction, to a penalty not exceeding twenty-five dollars.

Mr. JOHNSTON (*Bow River*): With an explanatory letter.

The CHAIRMAN: Is it agreed?

Carried.

The CLERK OF THE COMMITTEE: There is another proposed amendment which was submitted at our last meeting. I believe most of you have copies of it. It is rather extensive and it reads as follows:

PROPOSED AMENDMENT TO BILL 259

Subsection (1) of Section 260 of the said Act is repealed and the following substituted therefor:

(1) Where a railway is already constructed upon, along or across any highway, the Board may, of its own motion, or upon complaint or application, by or on behalf of the Crown, or any municipal or other corporation, or any person aggrieved, order the company to submit to the Board, within a specified time, a plan and profile of such portion of the railway, and may cause inspection of such portion, and may inquire into and determine all matters and things in respect of such portion, and the crossing, if any, and may make such order as to the protection, safety and convenience of the public as it deems expedient,

or may order that the railway be carried over, under or along the highway, or that the highway be carried over, under or along the railway, or that the railway or highway be temporarily or permanently diverted, *or that the crossing, if any, be temporarily or permanently closed*, and that such other work be executed, watchmen or other persons employed, or measures taken as under the circumstances appear to the Board best adapted to remove or diminish the danger or obstruction in the opinion of the Board arising or likely to arise in respect of such portion or crossing, if any, or any other crossing directly or indirectly affected.

Mr. WESELAK: Is the effect of this amendment only that the Board could close crossings without obtaining permission of the local municipality?

Hon. Mr. MARLER: I think that is the significance of the proposed amendment, and I would like to say to the committee that my understanding is that the Board already has quite extensive power with regard to the closing of existing crossings. Its practice has been not to close existing crossings without obtaining the concurrence of the municipality concerned, or without providing for a grade separation. This amendment would seem to put in the hands of the Board such power and authority, regardless of the views of the municipality—and for my part I must say I would be hesitant to subscribe to what might seem to be a rather arbitrary power to be given to the Board.

Mr. WESELAK: The municipality has the responsibility of allowing people on their roadways and right-of-ways.

Hon. Mr. MARLER: Yes.

Mr. WESELAK: I think they are closer to the thing than would be provided for in an amendment like this, and that such an amendment should be seriously considered before their powers are encroached upon.

Mr. JOHNSTON (*Bow River*): Whose amendment is this?

The CHAIRMAN: It was offered by Mr. Spence of the Canadian Pacific Railway.

Mr. GREEN: No, both of those amendments are from the Canadian National Railways.

Mr. HAHN: I think as the minister does in this matter. I would not like to see the power of the municipalities taken from them. This is just **another** means of refusing them the right to indicate whether or not a rail crossing should be eliminated. If there is existing legislation which does empower the Board of Transport Commissioners in consultation with a municipal body to close a present crossing, if they deem it desirable, then I see no reason that the municipality should be deprived of the privilege of making such representations to the Board. This would make it mandatory at the Board's suggestion to close a crossing merely at their particular say so, and I could not concur with the amendment.

Mr. CARRICK: May I ask a question of Mr. Kerr. I was a little confused by the evidence on this point. My understanding was that at the present time if the municipality concurs, the Board will make an order that crossings of the kind dealt with her, be closed. Is that correct?

Mr. R. KERR, Q.C. (*Law Branch, Board of Transport Commissioners*): That's right. There is a great measure of cooperation between the Board and the municipalities to achieve not only protection at crossings, but to have regard to the wishes of the municipality as to the closing.

Mr. CARRICK: That would seem to indicate that while they consider that they now have the power to make such an order without the concurrence of

the municipality, they would not make it. Therefore it is hard to see just what would be gained by including this submission.

Mr. KERR: If the municipality wants to close a road, it may close that road right up to the railway right-of-way. That comes within its own jurisdiction. It can stop traffic from going over the railway if it wishes to do so. But what Mr. Macdougall had in mind was a case of several crossings which were close to each other. He probably felt that one crossing would do instead of two or three, and that notwithstanding that the municipality might want to have the three crossings left open, the Board should be able to say: "We shall close two of these crossings, and we leave you with the third."

Mr. CARRICK: They seem to be able to do that now, although they may not desire to exercise such jurisdiction.

Mr. KERR: The powers of the Board are found in section 260 in that respect. Generally the Board is called upon to exercise its power in the case of protection. It is not called upon to exercise its power solely in the case of a closing. There has to be protection at some existing crossing; and if the Board exercises its power under that section, it either puts in protection at that crossing, if it feels that it is necessary, or it authorizes a grade separation. It can substitute some other crossing for the one in question.

Hon. Mr. MARLER: Perhaps a grade separation may be a substitute for a crossing.

Mr. KERR: That is right.

Mr. LAVIGNE: I do not think we should take any power away from the municipalities. Otherwise in the near future we will have the railways dictating to the municipalities; and we will find them saying to municipalities which are close to the railway: "We will have only one railway crossing and you will have to go twenty miles in order to cross another one."

I do not believe that is right. I believe that the municipality should retain its power to say: "We are going to close this road." If you have development on both sides of the railways and if the railway says: "We are going to cut off this area," then those people will have to travel for miles in order to cross the railway track. I do not believe that would be adequate. I do not believe that the power should be granted to the railways to do such a thing.

Mr. BARNETT: I have one question. I would like to have clarified the procedure which is set forth at present. Do I understand that at the present time if a railway approaches the Board with a request that a certain crossing be closed because it is no longer useful or necessary, and that it adds a certain hazard, that on the request of the railway concerned the Board would take the initiative and instigate the closing of that crossing; and if no serious objection were lodged to it, that the Board would then order that the crossing be closed. Is that the normal procedure today?

Mr. KERR: Well, sir, if nothing is involved except the closing of the crossing, it is not a question of protecting that crossing; and if it is desired that the crossing be closed, the railways usually take up the matter with the municipality and try to arrange for the municipality and the railways to act jointly to close the crossing; and if it goes before the Board, the Board's powers—as the Board has interpreted the section—can only be exercised by the Board to close the crossing where some alternative crossing is provided.

Mr. BARNETT: In the case which you have mentioned, in which the railway might be concerned over the number of crossings which are close together, does the Board interpret that part of the present section which says that the highway shall be carried over, under, or along the railway to mean that they could in fact say that the road must go along the railway to a certain main crossing, so that you would not have one at every block in an urban area?

Mr. KERR: I do not know if the Board has interpreted those words you have used particularly; but looking at the section as a whole it has held that the Board cannot close a crossing without providing alternative protection, if the municipality objects to the closing. Where the municipality is willing to close, then no question arises. The railway shuts off the traffic within the limits of its own right-of-way, and the highway authority exercises its own jurisdiction.

Mr. BARNETT: Have there been many occasions in recent years when any serious differences of opinion have arisen as between the railways and the municipalities over this question of closing or not closing a crossing?

Mr. KERR: I have only been with the Board for a very few years and I have no knowledge of them in any time. Perhaps Mr. Hall could say a word on the subject as to what it was like before I came with the Board.

Mr. HALL: No. I think generally there has been agreement. The Board does not ask for the closing of a crossing unless it is satisfied that it is in the public interest to do so. In no case have we had—that I can recall—any great difficulty. Of course, the Board always holds, in cases of protection, the power of saying: "We have the money to do it and we are prepared to support this thing if certain things are done." And as a rule, with the power which we have through the Grade Crossing Fund, everybody is ready to cooperate with us. I do not mean to say that the Board uses the big stick; but we can say, if the municipality does not want the crossing closed, "if we do not close the crossing, we might assist you in other things which you want to do."

Mr. BARNETT: The Board uses the Grade Crossing Fund as a carrot?

Mr. HALL: It certainly does, with good judgment and common sense.

The CHAIRMAN: Gentlemen, there is another amendment before the committee which I shall now ask the clerk of the committee to read.

The CLERK OF THE COMMITTEE:

Section 39 of said Act is amended by adding the following subsection thereto:

(3) In exercising its powers under subsection 2 of this section 39 and under section 262, the Board shall be governed by the same established principles of law and equity as govern the exercise of discretionary powers by the Courts, and shall not follow any precedents established by it in respect of the exercise of such powers prior to the enactment of this subsection.

Mr. JOHNSTON (*Bow River*): Who submitted this one?

The CHAIRMAN: It was submitted by Mr. Munnoch. Are there any questions?

Mr. HERRIDGE: Might we have an explanation of what the amendment means?

The CHAIRMAN: That was gone into quite fully the other day when Mr. Munnoch was here.

Mr. HERRIDGE: That may be, but some of us could not be here the other day. We were on other committees.

The CHAIRMAN: The Bell Telephone Company want to be compensated for the work which they do in regard to level crossings.

Mr. CARRICK: I think the witness explained that where there is work done which is deemed to be for the benefit of the railways and for the public safety, then the Board of Transport Commissioners will allow an amount to cover the expenses of the Bell Telephone Company in moving its equipment to be apportioned, as it does between the railways and the municipalities; but where

an application is made to do work which is *pro bono publico* or in the interests of public safety, then the Board of Transport Commissioners has taken the position that it will not order any payment in favour of the Bell Telephone Company; and this amendment is designed to avoid the precedent which has been set by the Board of Transport Commissioners to enable it, in that latter case, to impose a portion of those charges or the whole of the charges upon the municipality and the railway, and to authorize a payment out of the Grade Crossing Fund.

Mr. WESELAK: The telephone company would share in the gross amount available?

Mr. CARRICK: Yes, and it would be applicable to all public utility companies.

Hon. Mr. MARLER: Mr. Chairman, I must say that I have a certain sympathy with the position of the Bell Telephone Company as represented to me. It seems to be a fact that in no case that Mr. Munnoch could think of, has the Bell Telephone Company received any compensation when it was required to move its facilities from an existing site to a new one. That may be of course because the cases in which the issue has presented itself have been cases in which the commissioners felt that the whole cost should be borne by the telephone company. I can see that it might be possible that the Bell Telephone Company or some other public utility company should receive compensation and I fully believe that the Railway Act as it is now drafted gives the commissioners the full power to determine how those costs should be paid. I think perhaps what Mr. Munnoch covered is that in no case have the commissioners found circumstances in which they thought the telephone company should be compensated for the cost of moving.

Mr. JOHNSTON (*Bow River*): This would not alter it, would it?

Hon. Mr. MARLER: With regard to the amendment, I think that in an effort to alter the present state of affairs, Mr. Munnoch has gone much further than is necessary for him to go in order to obtain what he considers would be justice for his company.

In fact, under the amendment which he proposed the discretion of the Board would be severely limited; whereas up to the present, it has been an absolute discretion. I think the Board needs absolute discretion to deal with what I consider to be an administrative matter rather than a legal question or a juridical matter. Consequently I would be opposed to the amendment which Mr. Munnoch suggested.

However, I would like to say to the committee that I have thought further about the question since the committee met last week and I am quite prepared to accept the responsibility of asking the Board to re-examine in the light of present day conditions the principles which should apply to the removal of the facilities of public utilities in connection with grade separation projects. As Mr. Munnoch said the other day, the question was considered by the Board in 1932. But I think we are all agreed that a lot has happened since 1932 and perhaps our thinking in regard to the matter has evolved since that time.

I do feel that the committee would be doing justice to the Bell Telephone Company and other similarly placed utility companies if I, as Minister of Transport, were to ask the Board to reconsider the whole matter in the light of circumstances now prevailing rather than to be guided by a decision rendered in 1932.

It may be that the Board, after examining the matter, may reach exactly the same conclusion as it did in 1932, but I would feel, at least, that all concerned had had an opportunity of presenting their sides of the case to the Board, and the whole question would be thoroughly canvassed, and everybody

would have his day in court and the opportunity of presenting the argument which he thought would justify a change in the established practice of the Board.

I would be hesitant to accept the amendment also because I feel, without further hearings before the Board, there might very easily be a company, or municipality which was not represented before this committee, and it might do them a serious injustice. I do not think that anything that has been said about the bill in the House or elsewhere would have led the municipalities to believe that their position would be seriously altered by something done in this bill. But I would like to have the Board of Transport Commissioners hold a hearing on the subject at which all interested parties, the railways, the municipalities, and the public utility companies could put forth their views, and the Board could decide whether a principle should be followed, or whether each case should be dealt with on its own merits.

Mr. WESELAKE: The Board has absolute discretion now, and it is not bound by its previous decisions.

Hon. Mr. MARLER: That is my understanding.

Mr. WESELAKE: Then this would be surplus legislation.

Hon. Mr. MARLER: It converts an absolute discretion into one which is no longer absolute; and I think because it has the function of apportioning costs, it is essentially an administrative function, and I do not see how you can say that the principles of law and equity are to govern. That is my personal opinion.

The CHAIRMAN: Shall this be referred to the Minister of Transport?

Mr. GREEN: I did not understand the minister to ask for a recommendation in this committee. He said that he would, in the course of administering his department, ask the Board of Transport Commissioners to review the situation. That I think is a very good idea but to go one step further and say that this committee recommends such a thing I think is unnecessary. As the minister has pointed out hundreds of municipalities would be affected if there is a change in this law and they would be paying part of the shot which the Bell Telephone Company is now paying and I do not think this committee should go on record as having any doubt about the law as it stands at the present time. Why not simply let the minister carry on as he suggests and have it reviewed by the board rather than this committee making any recommendations.

The CHAIRMAN: Is that agreed?

Agreed.

Mr. CARRICK: I am wondering whether before I got here the suggestion made by Mr. Spence had been dealt with. He made a suggestion that part of the cost of maintenance of signals be paid out of the crossing fund. I wonder whether that has been dealt with or whether you, sir, intend to deal with it? Mr. Spence submitted two statements to us and he suggested that the C.P.R. should be compensated for the cost of maintenance and operation of the highway crossing protection devices that were established under order of the board.

Hon. Mr. MARLER: Mr. Chairman, perhaps as the members of the committee will remember when I introduced the resolution which preceded this bill I said that the question had been considered by the government and that we had decided that we would not recommend a change by which annual costs of maintenance would be paid out of the Grade Crossing Fund. I think I indicated that was not a decision for all time but was a decision for the present. I think, and I do not doubt that honourable members would somewhat share this view, that the fund should be used primarily to overcome the problem of protection and not the problem of maintaining the protection. I

think that we might change our minds on the subject afterwards, but for the moment at least I would feel happier if we were going to devote all the moneys in the fund to the work of protection, grade separation and the capital or initial cost rather than maintenance costs which are I admit, not inconsiderable, but which do not affect any municipality very heavily. The railways are already receiving considerable relief because the contributions from the Grade Crossing Fund are being increased and their own contributions are being decreased. I think they should not complain too much and I think perhaps we might review the question of annual maintenance charges at some future time.

Mr. HERRIDGE: I think the minister is quite correct in that.

The CHAIRMAN: Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry?

Carried.

Shall I report the bill without amendment?

Carried.

Hon. Mr. MARLER: May I thank the committee for the courtesy they have shown me in allowing me to talk so much before this committee in connection with this bill. I hope on future occasions here I will be more of a listener.

The CHAIRMAN: I think it has been a great pleasure to listen to you, sir.

Our next meeting will be at 10.00 o'clock on Thursday, May 12, to consider bill 283, an Act to incorporate Westspur Pipe Line Company.

The committee adjourned.

